[redacted]

No. 29

[redacted]

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 24, 1964
CERTIORARI GRANTED MAY 4, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 29

FOREST BRITT PETER, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the Northern District of California, Southern Division		
Indictment	A	1
Judgment and commitment	D	4
Notice of appeal	E	6
Transcript of proceedings, November 16, 1962 (excerpts)	1	7
Appearances	1	7
Stipulation re defendant	3	7
Offers in evidence	3	8
Motion for acquittal and denial thereof	12	8
Testimony of Forest Britt Peter—		
direct	25	9
cross	28	11
Government's Exhibit 1	36	13
Selective Service Registration Card	36	13
Selective Service System Classification Questionnaire	39	14

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 8, 1964

	Original	Print
Record from the United States District Court for the Northern District of California, Southern Division—Continued		
Government's Exhibit 1—Continued		
Selective Service System Minute Sheets	46	21
Poem from "An Astonished Eye Looks Out of the Air" by Kenneth Patchen and handwritten notation	50	23
Handwritten request of Forest Britt Peter for form	51	24
Special Form for Conscientious Objector with attachments	52	25
Letter from Forest Britt Peter to Local Board No. 53, dated July 19, 1959	61	30
Letter from Selective Service System, Local Board No. 53 to Forest Britt Peter, dated July 23, 1959	62	31
Letter from Forest Britt Peter to Local Board, No. 253, dated August 3, 1959 with attachments	63	32
Clerk's summary, dated August 3, 1959	66	34
Letter from Forest Britt Peter to Local Board, No. 53, dated August 7, 1959	67	34
Letter from T. Oscar Smith, Chief, Conscientious-Objector Section to Chairman, Appeal Board, Northern District of California, dated July 22, 1960	73	35
Resume of the Inquiry, dated February 4, 1960	77	38
Letter from The Walden Foundation to Hearing Officer, U.S. Department of Justice, dated February 27, 1960	84	45
Letter from Kenneth Rexroth, KPFA(FM) to Hearing Officer, dated February 25, 1960	85	47
Letter from James R. Gray, San Leandro High School to Mr. Earl Wixsey, Hearing Officer, undated	86	49
Letter from Ebbe Borregaard to Britt, undated	87	50

	Original	Print
Record from the United States District Court for the Northern District of California, Southern Division—Continued		
Government's Exhibit 1—Continued		
Statement "To Whom It May Concern", dated February 29, 1960 signed by Mr. & Mrs. Duncan	89	51
Statement signed by Forest Britt Peter, dated February 29, 1960	91	51
Letter from Northern California Appeal Board to Forest B. Peter, dated July 29, 1960	95	54
Letter (handwritten) from Forest Britt Peter to "Sirs", dated August 6, 1960	96	55
Letter to "Sirs", dated August 6, 1960	97	56
Letter (handwritten) from Forest Britt Peter to "Dear Sirs", dated August 6, 1960	98	57
Letter from Forest Britt Peter to "Dear Sirs", dated August 15, 1961	115	62
Letter from Forest Britt Peter to "Dear Sirs", dated August 15, 1961	116	62
Order to report for Armed Forces Physical Examination, Selective Service System, mailed July 20, 1961	118	63
Delinquency Notice, Selective Service System	119	64
Order to report for Induction, Delinquent, Selective Service System	121	65
Letter from Forest Britt Peter to "Local Board No. 53", dated October 11, 1961	122	66
Letter from Forest Britt Peter to "Dear Sirs", dated November 22, 1961	123	67
Memorandum from U. S. Army Recruiting Main Station to U. S. Attorney, dated November 22, 1961	125	68
Record of Induction	126	71
Report of medical examination	128	73
Delinquent Registrant Report, Selective Service System	135	75

	Original	Print
Record from the United States District Court for the Northern District of California, Southern Division—Continued		
Government's Exhibit 2	142	77
Letter from Forest Britt Peter to "Dear Sirs", undated	142	77
Letter from Selective Service System, California Headquarters to Forest Britt Peter, dated July 3, 1962	146	78
Letter from Forest Britt Peter to "Dear Sirs", undated	147	79
Letter from Local Board No. 53 to Forest Britt Peter, dated August 8, 1962	149	80
Defendant's Exhibit A	151	81
Letters from Forest Britt Peter to Lt. General Lewis B. Hershey, Director, Selective Service System, dated July 6, 1962	151	81
Proceedings in the United States Court of Appeals for the Ninth Circuit	157	88
Opinion, Hamlin, J.	157	88
Judgment	165	96
Order denying petition for rehearing	166	97
Clerk's certificate (omitted in printing)	167	97
Order extending time to file petition for writ of certiorari	168	98
Order allowing certiorari	169	99

[fol. A] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

Criminal No. 38684

Violation: Section 12(a) Universal Military Training and Service Act, 50 U.S.C., App. 462(a), Refusal to Submit to Induction.

UNITED STATES OF AMERICA, Plaintiff,

v.

FOREST BRITT PETER, Defendant.

INDICTMENT—Filed September 26, 1962

The Grand Jury charges: That

Forest Britt Peter,

defendant herein, being a male citizen of the age of 24 years, residing in the United States and under the duty to present himself for and submit to registration under the provisions of Public Law 569 of the 80th Congress, approved June 24, 1948, known as the "Selective Service Act of 1948," as amended by Public Law 51 of the 82nd Congress, approved June 19, 1951, known as the "Universal Military Training and Service Act," hereinafter called "said Act," and thereafter to comply with the rules and regulations made pursuant thereto, become a registrant of Local Board No. 53 of the Selective Service System in the City of Hayward, County of Alameda, State and Northern District of California, which said Local Board No. 53 was duly created, appointed and acting for the area of which the said defendant is a registrant, did, on or about the 22nd day of November, 1961, in the City of Hayward, County of Alameda, [fol. B] State and Northern District of California, know-

ingly fail to perform such duty that he, the said defendant, having theretofore been duly classified in Class I-A and having theretofore been duly ordered by his said Local Board No. 53, to report at Hayward, California, for forwarding to an induction station for induction into the Armed Forces of the United States, and having so reported, and thereafter having been forwarded to an induction station, to-wit, in the City of Oakland, County of Alameda, did, on the 22nd day of November, 1961, in the City of Oakland, County of Alameda, State and Northern District of California, knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States as provided in the said Act and the rules and regulations made pursuant thereto.

A True Bill.

A. H. Luebkeman, Foreman.

Cecil F. Poole, United States Attorney.
(Approved as to Form JFH, [Initials Illegible]).

[fol. C]

38684

1—Count Indictment

UNITED STATES,

v.

FOREST BRITT PETER.

Violation: Section 12(a) Universal Military Training and Service Act, 50 U.S.C., App. 462(a), Refusal to Submit to Induction.

Penalty: May be imprisoned not more than 5 years, or may be fined not more than $10,000 or both.

Summons

A true bill,

A. H. Luebkeman, Foreman.

Filed in open court this ..... day of ..... A.D. 19.....

....., Clerk.

Bail, $ Summons shall issue

[Signature Illegible]

[fol. D]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

No. Crim. 38684

UNITED STATES OF AMERICA,

v.

FOREST BRITT PETER.

JUDGMENT AND COMMITMENT—November 30, 1962

On this 30th day of November, 1962 came the attorney for the government and the defendant appeared in person and[1] with Coufisel.

It Is Adjudged that the defendant has been convicted upon his plea of[2] Not guilty, and a finding of Guilty of the offense of Violation: Section 12(a) Universal Military Training and Service Act, 50 U.S.C., App. 462(a), Refusal to Submit to Induction.

as charged[3] in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

---

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] Six (6) Months.

It Is Adjudged that[5] Stay of Execution for (7) Seven Days. (December 7, 1962)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Michael J. Roche, United States District Judge.

The Court recommends commitment to:[6]

Judgment and Commitment
Filed this 30th day of November, 1962

James P. Weish, by Joseph A. [Illegible], Deputy Clerk.

Entered in Criminal Docket December 3, 1962.

Approved by James F. Hewitt, Assistant U. S. Attorney.

---

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court wishing to recommend a particular institution.

[fol. E] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 38684

[Title omitted]

NOTICE OF APPEAL—Filed December 3, 1962

Name and Address of Appellant: Forest Britt Peter, 56 Sanchez Street, Apartment 1, San Francisco, California.

Name and Address of Appellant's Attorneys: Neyhart & Grodin, 1035 Russ Building, San Francisco, California.

Offense: Violation of Section 12 (a) Universal Military Training and Service Act, 50 U. S. C., App. 462(a), Refusal to Submit to Induction.

Judgment: Defendant, Forest Britt Peter, was found guilty and was sentenced on November 3, 1962, to six months' confinement in an institution to be selected by the Attorney General. A one week Stay of Execution was granted and the defendant is now free on his own recognizance.

I, the attorney for the above named appellant hereby appeal to the United States Court of Appeal for the Ninth Circuit from the above stated judgment.

Neyhart & Grodin, By: Richard R. Heath, Attorneys for Defendant and Appellant.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

No. 38684

Before: The Honorable Michael J. Roche, Judge.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

FOREST BRITT PETER, Defendant.

Reporter's Transcript of Proceedings—November 16, 1962

APPEARANCES:

For the Plaintiff: Cecil F. Poole, United States Attorney, By: James F. Hewitt, Assistant United States Attorney.

For the Defendant: Messrs. Neyhart & Grodin, By: Richard R. Heath, Esq.

[fol. 3] The Clerk: United States versus Forest Britt Peter. Would counsel please state their appearances for the record?

Mr. Heath: Richard Heath for the defendant.

Mr. Hewitt: James Hewitt, United States Attorney, for the government.

The Court: Proceed.

STIPULATION RE DEFENDANT

Mr. Hewitt: Very well, Your Honor.

May it please the Court, this is a case involving a denial of a claim for conscientious objector status and a refusal to submit and to be processed for induction. We would like to stipulate, with the agreement of counsel, that on November 22, 1961, this defendant reported to the induction station in Oakland and refused to be processed in accordance with the

applicable provisions of the law pertaining to induction. He did not take his physical examination. He did appear at the induction station but refused further processing. May we ask that this stipulation be entered into?

Mr. Heath: We will so stipulate.

Offers in Evidence

Mr. Hewitt: We would now like to offer, Your Honor, into evidence certain copies of the Selective Service file of this registrant, if there's no objection.

Mr. Heath: No objection, Your Honor.

Mr. Hewitt: And also, if the Court please, a supple-
[fol. 4] mental certified copy of the file pertaining to matters that arose after the certified file had been forwarded to our office. May I ask that that be marked Government's next in order?

The Court: They may be received in evidence.

The Clerk: This is one and two, Mr. Hewitt?

Mr. Hewitt: That's correct, Mr. Clerk.

The Clerk: Plaintiff's Exhibits No. 1 and 2 marked in evidence.

(The exhibits above described were received in evidence as Government's Exhibits 1 and 2.)

* * * * * * *

[fol. 12] Mr. Hewitt: We have no further evidence, Your Honor. That is the Government's case.

* * * * * * *

Motion for Acquittal and Denial Thereof

Mr. Heath: Your Honor, at this time I would like to make a motion for acquittal. My grounds for the motion is that there is no basis in fact in the file for the determina-
[fol. 13] tion which was made by the Selective Service Board denying the status of conscientious objector in this case.

* * * * * * *

[fol. 22] The Court: The Court is prepared to rule on your motion. Your motion will be denied.

Mr. Heath: The motion of acquittal is denied, Your Honor?

[fol. 23] The Court: Yes.

* * * * * * *

[fol. 25] Forest Britt Peter, called as a witness in his own behalf, being first duly sworn, testified as follows:

The Clerk: Would you please state your name and address.

The Witness: My name is Forest Britt Peter; I live at 56 Sanchez Street in San Francisco, apartment one.

Direct examination.

By Mr. Heath:

Q. Mr. Peter, you are, of course, the defendant in this case?

A. Yes.

Q. I would like for you to explain to the Court at this time the reason and the basis for your claim as a conscientious objector.

A. I think the basic reason—my religious basis for any conscientious objection to war is a reference to all living [fol. 26] things. I feel a relationship to all other living beings, and I feel called upon to respect them, and I could not kill them or engage in an institution such as the Armed Forces, which predicates this belief, which would lead one possibly in the service to commit such an act to kill.

Q. May I ask you where you acquired these beliefs, Mr. Peter?

A. As the record shows, through my reading, association with other people, and living in the world.

Q. What specific reading have you done which has led you to this belief?

A. I have done quite a bit of reading in Eastern philosophies, including Swanson and Confucius, the Buddhist teachings, the Four Noble Truths of Buddha, and the 8-fold Path to Righteousness. I have studied Christian mystics from Christ; I think I have read some of the parables of Christ; St. Francis; William Blake, 19th century American

minister; Ralph Waldo Emerson; Whitman; Thoreau; John Muir; modern American poets such as Kenneth .....; he has written a number of poems stating his opposition to war; Brother Antonitus, who was a conscientious objector during the Second World War.

* * * * * * *

[fol. 27] By Mr. Heath:

Q. What formal training have you had?

A. I attended Reed College for two years. I have worked —in regards to objection to war, I have worked quite a bit in the Pacifist movement in the Bay Area. I was a volunteer worker for Acts of Peace for almost a year. And I participated in statements against the United States policy of war.

Q. The reading and studying that you have testified to, the first here, did this take place in Reed College or afterward, or when?

A. It's taken place ever since high school days.

Q. Now, you were asked on the questionnaire, the Selective Service form for conscientious objector, if you believed in a Supreme Being, and I will ask you that question at this time. Do you believe in a Supreme Being?

A. I have always stated that it depended on the definition [fol. 28] of "Supreme Being." As it was stated in the form, there was no definition given in the form. I have also said that I couldn't possibly give the answer in just a yes or no question, because I think I have some right to define God or my religious beliefs in my own words.

Q. Would you define them for us now at this point?

A. I think that my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings, and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of them, the essence being alive, and my respecting and loving this livingness in other objects and human beings.

Q. Well, now, in relation to the question of a Supreme Being—

A. I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.

Mr. Heath: I have no further questions.

Cross examination.

By Mr. Hewitt:

Q. Would you tell us, Mr. Peter, what you understand by the word "religion"?

A. By "religion"—I think in my own terms, religion is based on two things. Number one would be vision, a vision [fol. 29] of reality in the world or the universe, and second, is conviction regarding that vision, the way a person reacts to his vision of reality.

Q. This is your definition of "religion"?

A. This is my definition to you now.

Q. Do you have any different definition of religion for the Selective Service System?

A. No. I think—

Q. So when you say your beliefs are religious, they are religious in that they relate to your convictions regarding reality?

A. Yes.

Mr. Hewitt: I have no further questions, Your Honor.

The Court: Any further questions?

Mr. Heath: I have nothing further.

The Court: Step down.

(Witness excused.)

Mr. Heath: Your Honor, the defense rests.

* * * * * * *

[fol. 35] The Court: Matter submitted?

Mr. Hewitt: Submitted, Your Honor.

Mr. Heath: Submitted.

The Court: The Court finds the defendant guilty as charged.

* * * * * * *

GOVERNMENT'S EXHIBIT No. 1

(See opposite) ☞

53

NAVY Form No. 1
(Revised 6 28 50)
Form approved
Budget Bur. No. [illegible]

SELECTIVE SERVICE SYSTEM

REGISTRATION CARD

SELECTIVE SERVICE NUMBER
4 53 38 188
(Registrar will not enter Selective Service number)

1 Name Peter Forest Britt
(Last) (First) (Middle)

2 Place of residence 928- Evergreen Ave
(Number and street or R. F. D. number)
San Leandro Calif
(City, town, village or county) (State)
[The place of residence given on the line above will determine Local Board jurisdiction]

3 Mailing address same
(Number and street or R. F. D. number)
same
(City, town, village or county) (State)

4 Name and address of person who will always know your address
Mr Clyde L. Peter 928- Evergreen Ave. S.L.
(Name) (Address)

5 Date of birth July 6 1938
(Month) (Day) (Year)

6 Place of birth Greenville
(City, town, village or county)
Calif.
(State or country)

7 Occupation Student

8 Employer Firm or individual (if self-employed, so state)

9 Nature of business, service rendered, or chief product

10 Place of employment or business San Leandro High School
(Number and street or R. F. D. number) (County) (State)

11 If you ever were rejected for service in the Armed Forces, give
Date Place

12 Marital status Married and living with wife ( ) Separated ( ) (Check here
Single (never married) (X) Divorced ( ) Widower ( ) if a Father ( )

(OVER)

16 46001 4

[fol. 36]

12. Active duty in the Armed Forces of the United States or a cobelligerent nation since Sept. 16, 1940:

None
(Branch of Armed Forces) (Service number) (Date of entry)

None
(Name of last organization) (Date of separation)

14. Present membership in a reserve component of the Armed Forces:

None
(Branch of Armed Forces) (Service number) (Date of entry)

None
(Grade and organization)

I affirm that I have verified the foregoing answers and that they are true:

× Forest Britt Peter
(Signature of registrant)

DESCRIPTION OF REGISTRANT

15. Color of eyes Brown Color of hair Black Complexion Fair

Height (approx.) 5 ft. 11 in. Weight (approx.) 150

Other obvious physical characteristics that will aid in identification:

None

I certify that my answers are true; that the person registered has read or has had read to him his own answers; that I have witnessed his signature or mark and that all of his answers of which I have knowledge are true, except as follows:

July 18, 1956 Vincent A. Cobbs
(Date of registration) (Signature of registrar)

Registrar for Local Board No. 53 Alameda County California
(Number) (Name of county) (State)

LOCAL BOARD No. 53
Alameda County

2063 B Street
Hayward, California
(Stamp of the Local Board of Jurisdiction as determined by Item 2, front of card)

[illegible]

...SYSTEM
...RT "D"
...1957
...Street
...California

Form approved.
Budget Bureau No. 33 R102.6.

SELECTIVE SERVICE SYSTEM

CLASSIFICATION QUESTIONNAIRE

LOCAL BOARD NO. 53
[illegible] County
[illegible] 2030 "D" Street
[illegible] California
(Local Board Stamp)

THIS QUESTIONNAIRE MUST BE RETURNED ON OR BEFORE
June 3, 1957

Date of mailing May 24, 1957
Date received back at local board _____

1. Name of Registrant			2. Selective Service No.	3. Date of birth
PETER (Last)	Forest (First)	Britt (Middle)	4 53 38 188	July 6, 1938 (Month) (Day) (Year)

4. Mailing address: 928 Evergreen Avenue, (Number and street or R. F. D. route) San Leandro, (City, town, or village) Ala., (Zone) California (County) (State)

NOTICE TO REGISTRANT

YOU ARE REQUIRED BY THE SELECTIVE SERVICE REGULATIONS TO FILL OUT THIS QUESTIONNAIRE TRUTHFULLY AND RETURN IT TO THIS LOCAL BOARD ON OR BEFORE THE DATE SHOWN IN THE OUTLINED BLOCK TO THE RIGHT ABOVE. WILLFUL FAILURE TO DO SO IS PUNISHABLE BY FINE AND IMPRISONMENT. AN ENTRY MUST APPEAR IN EVERY SERIES. WHEN THE QUESTIONS IN A GIVEN SERIES DO NOT APPLY TO YOU, ENTER "NONE," OR ENTER "DOES NOT APPLY" ACROSS THE SPACE.

FILL OUT THIS FORM ON TYPEWRITER, OR PRINT IN INK.

Elizabeth Steele
Clerk or Member of Local Board.

(All of the above items, except the date received back at local board are to be filled in by the local board clerk before the questionnaire is mailed to the registrant.)

INSTRUCTIONS TO REGISTRANT

1. This questionnaire is intended to furnish your local board with information to enable it to classify you. The local board will mail you a notice of your classification.
2. You are required to sign the certificate on page 7. If another person assists you in completing this questionnaire, the person assisting is required to complete the statement following your certificate. Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making, or being a party to the making, of any false statement or certificate regarding or bearing upon a classification.

Fol. 39

[illegible] 1078 "B" Street
[illegible]
(Local Board Stamp)

June 3, 1957

Date of mailing May 24, 1957

Date received back at local board

1. Name of Registrant			2. Selective Service No.	3. Date of birth
PETER (Last)	Forest (First)	Brikk (Middle)	4 53 38 188	July 6, 1938 (Month) (Day) (Year)

4. Mailing address

928 Evergreen Avenue, (Number and street or R. F. D. route) | San Leandro, (City, town, or village) | Ala., (Zone) | California (County) | (State)

NOTICE TO REGISTRANT

YOU ARE REQUIRED BY THE SELECTIVE SERVICE REGULATIONS TO FILL OUT THIS QUESTIONNAIRE TRUTHFULLY AND RETURN IT TO THIS LOCAL BOARD ON OR BEFORE THE DATE SHOWN IN THE OUTLINED BLOCK TO THE RIGHT ABOVE. WILLFUL FAILURE TO DO SO IS PUNISHABLE BY FINE AND IMPRISONMENT. AN ENTRY MUST APPEAR IN EVERY SERIES. WHEN THE QUESTIONS IN A GIVEN SERIES DO NOT APPLY TO YOU, ENTER "NONE," OR ENTER "DOES NOT APPLY" ACROSS THE SPACE.

FILL OUT THIS FORM ON TYPEWRITER, OR PRINT IN INK.

E. Elizabeth Brooks
Clerk or Member of Local Board.

(All of the above items, except the date received back at local board are to be filled in by the local board clerk before the questionnaire is mailed to the registrant.)

INSTRUCTIONS TO REGISTRANT

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2. You are required to sign the certificate on page 7. If another person assists you in completing this questionnaire, the person assisting is required to complete the statement following your certificate. Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making, or being a party to the making, of any false statement or certificate regarding or bearing upon a classification.
3. If you are an inmate of an institution and are unable to complete this questionnaire the executive head of such institution should communicate that fact immediately to your local board. The questionnaire should be completed upon your release.
4. Make no alterations in the printed matter in this questionnaire.
5. All spaces in Series I, V, VIII, IX, XI, XIII, XIV, and XV must be completed insofar as they pertain to you. When the questions in the other series do not apply to you, enter "None" or enter "Does Not Apply."
6. If you furnish additional information or affidavits, insert those within the questionnaire.
7. If you are now on active duty with the Armed Forces, execute only Series I and II of the questionnaire and return it to your local board.
8. After this questionnaire has been returned, report to your local board at once any change of address, any change in marital or dependency status, any change in place of employment or occupation, or any other new fact which may affect your classification.

SSS Form No. 100 (Revised 3-21-56) Supplies of previous printings shall be used until exhausted.

16—88744-4

Fol. 39

14

Statements in This Questionnaire Are Confidential as Prescribed in the Selective Service Regulations

Fill Out This Form on TYPEWRITER or Print in Ink

STATEMENTS OF THE REGISTRANT

Series I.—IDENTIFICATION

INSTRUCTIONS: You are required to complete all entries in this series. Please print.

First Name	Middle Name	Last Name
Forest	Britt	Peter

Other Names Used: Reed College Portland 2, Oregon or

Present Address: 428 Evergreen Ave. (Number and street or R. F. D. route) San Leandro (City, town, or village) Alameda (County) Calif (State) from June to Sept.

Telephone No. (If none, enter "None")	Social Security No. (If none, enter "None")
none	546-46-9944

Series II.—PRESENT MEMBER OF ARMED FORCES, OR RESERVE COMPONENT, OR OFFICER TRAINING PROGRAM

INSTRUCTIONS.—(1) You are required to complete the first part of this series if you are on active duty in the Armed Forces of the United States, the Coast Guard, a cadet or midshipman at an Armed Force academy, a commissioned officer of the Public Health Service or the Coast and Geodetic Survey on active duty, or a midshipman, Merchant Marine Academy. This information will be verified by the branch of service concerned. If none, enter "None."

Branch of Service or Organization	Service No.	Date of Entry
none	none	

INSTRUCTIONS.—(2) You are required to complete the second part of this series if you are a member of the federally recognized National Guard or Air National Guard, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve, the Coast Guard Reserve, or the Public Health Service Reserve; or if you have been selected for enrollment or continuance in the senior division, Reserve Officer Training Corps, or the Air Reserve Officer Training Corps or the Navy Reserve Officer Training Corps, or the Naval and Marine Corps officer candidate training program or the Reserve officers' candidate program of the Navy, or the platoon leaders' class of the Marine Corps or the officer procurement programs of the Coast Guard and Coast Guard Reserve, or appointed an ensign, United States Naval Reserve, while undergoing professional training; or if you are a fully qualified and accepted aviation cadet applicant. If none, enter "None."

Branch of Armed Forces (Army, Navy, Air Force, etc.)	Reserve Component or Program (Show organized unit, unorganized unit, National Guard, aviation cadet applicant, ROTC, AROTC, NROTC, etc.)	Service Number (If applicable)	Date of Latest Entry or Date of Selection, Appointment, or Acceptance
none	none		

[fol. 40]

Series III.—PRIOR MILITARY SERVICE

INSTRUCTIONS.—You are required to complete the items in this series if you have been on active duty as a member of the Armed Forces of the United States, the Coast Guard, the Public Health Service, the Coast and Geodetic Survey or the armed forces of a foreign country. (Use a separate line for each term of service, listing last service first.) If none, enter "None."

1. Branch of Armed Forces or Country	Date of Entry Into Active Service (Month, Day, Year)	Service Number	Date of Separation From Active Service (Month, Day, Year)	Character of Separation (Honorable, General, Dishonorable)
none	none			

2. Does service shown in Item 1 above include any time spent in the Army Specialized Training Program or any similar program conducted by the Navy, or as a cadet or midshipman in one of the armed service academies or in the Merchant Marine Academy, or on active duty for training only? Yes ☐; No ☐.

3. If your answer to Item 2 above is "Yes" give the name of the program or academy ....., date of entry ..... (Month) (Day) (Year) and date of release ..... (Month) (Day) (Year) from such Service.

Series IV.—OFFICIALS DEFERRED BY LAW

Reed College Portland 2, Oregon or

PRESENT ADDRESS

429 EVERGREEN AVE. SAN Leandro Alm. Calif from your Dept.
(Number and street or R. F. D. route) (City, town, or village) (Zone) (County) (State)

TELEPHONE NO. (If none, enter "None")	SOCIAL SECURITY NO. (If none, enter "None")
none	546-46-9944

Series II.—PRESENT MEMBER OF ARMED FORCES, OR RESERVE COMPONENT, OR OFFICER TRAINING PROGRAM

INSTRUCTIONS.—(1) You are required to complete the first part of this series if you are on active duty in the Armed Forces of the United States, the Coast Guard, a cadet or midshipman at an Armed Force academy, a commissioned officer of the Public Health Service or the Coast and Geodetic Survey on active duty, or a midshipman, Merchant Marine Academy. This information will be verified by the branch of service concerned. If none, enter "None."

Branch of Service or Organization	Service No.	Date of Entry
none	none	

INSTRUCTIONS.—(2) You are required to complete the second part of this series if you are a member of the federally recognized National Guard or Air National Guard, the Regular Army Reserve, the Air Force Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve, the Coast Guard Reserve, or the Public Health Service Reserve; or if you have been selected for enrollment or continuance in the senior division, Reserve Officer Training Corps, or the Air Reserve Officer Training Corps or the Navy Reserve Officer Training Corps, or the Naval and Marine Corps officer candidate training program or the Reserve officers' candidate program of the Navy, or the platoon leaders' class of the Marine Corps or the officer procurement programs of the Coast Guard and Coast Guard Reserve, or appointed an ensign, United States Naval Reserve, while undergoing professional training; or if you are a fully qualified and accepted aviation cadet applicant. If none, enter "None."

Branch of Armed Forces (Army, Navy, Air Force, etc.)	Reserve Component or Program (Show organized unit, unorganized unit, National Guard, aviation cadet applicant, ROTC, AROTC, NROTC, etc.)	Service Number (If applicable)	Date of Latest Entry or Date of Selection, Appointment, or Acceptance
none	none		

Series III.—PRIOR MILITARY SERVICE

INSTRUCTIONS.—You are required to complete the items in this series if you have been on active duty as a member of the Armed Forces of the United States, the Coast Guard, the Public Health Service, the Coast and Geodetic Survey or the armed forces of a foreign country. (Use a separate line for each term of service, listing last service first.) If none, enter "None."

1. Branch of Armed Forces or Country	Date of Entry Into Active Service (Month, Day, Year)	Service Number	Date of Separation From Active Service (Month, Day, Year)	Character of Separation (Honorable, General, Dishonorable)
none	none			

2. Does service shown in Item 1 above include any time spent in the Army Specialized Training Program or any similar program conducted by the Navy, or as a cadet or midshipman in one of the armed service academies or in the Merchant Marine Academy, or on active duty for training only? Yes ☐; No ☐.

3. If your answer to Item 2 above is "Yes" give the name of the program or academy .....,
date of entry ..... (Month) (Day) (Year) and date of release ..... (Month) (Day) (Year) from such Service.

Series IV.—OFFICIALS DEFERRED BY LAW

1. I am at present the Governor of a State, Territory, or possession; a public official chosen by the voters of an entire State, Territory, or possession; a member of the legislative body of the United States or of a State, Territory, or possession; a judge of a court of record of the United States, or of a State, Territory, or possession or the District of Columbia; my office is ..... (If none, enter "None")

2. My term of office expires ..... (Date)

50C—19—53744-6

[fol. 40]

15

Series V.—SOLE SURVIVING SON

I AM Not the sole surviving son of a family of which one or more sons or daughters were killed in action (Am, am not)
or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

Series VI.—MINISTER, OR STUDENT PREPARING FOR THE MINISTRY

INSTRUCTIONS.—You are required to complete the statements in this series if you are a minister or a student preparing for the ministry. If not applicable, enter "Does Not Apply" across this series.

1. (a) I ..... (am, am not) a minister of religion. (b) I ..... (do, do not) regularly serve as a minister.

(c) I have been a minister of the ..... (Name of sect or denomination) since ..... (Month) (Day) (Year)

(d) I ..... (have, have not) been formally ordained. (e) If so, my ordination was performed on ..... (Month, day, year)

by ..... (Ecclesiastical official performing the ordination) at ..... (City and State)

2. (a) I ..... (am, am not) a student preparing for the ministry under the direction of .....

..... (Name of church or religious organization) in a theological or divinity school.

(b) I am attending the ..... (Name of theological or divinity school)

located at .....

3. I ..... (am, am not) a student preparing for the ministry under the direction of .....

..... (Name of church or religious organization), pursuing a full-time course of instruction

leading to my entrance into ..... (Name of theological or divinity school)

located at ....., in which I have been pre-enrolled.

Series VII.—CONSCIENTIOUS OBJECTION TO PARTICIPATION IN WAR IN ANY FORM

INSTRUCTIONS.—You should complete this series by signing the statement below, requesting a Special Form for Conscientious Objector (SSS Form No. 150), from the local board, if, by reason of religious training and belief you are conscientiously opposed to participation in war in any form. DO NOT SIGN THIS SERIES UNTIL YOU HAVE READ CAREFULLY.

BY REASON OF RELIGIOUS TRAINING AND BELIEF I AM CONSCIENTIOUSLY OPPOSED TO PARTICIPATION IN WAR IN ANY FORM AND FOR THIS REASON HEREBY REQUEST THAT THE LOCAL BOARD FURNISH ME A SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR (SSS FORM NO. 150) WHICH I AM TO COMPLETE AND RETURN TO THE LOCAL BOARD FOR ITS CONSIDERATION.

..... (Signature)

Series VIII.—FAMILY STATUS AND DEPENDENTS

INSTRUCTIONS.—You are required to complete this series, and to furnish such other information as required by the local board.

1. (a) I have never been married ☒; I am a widower ☐; I am divorced ☐; I am married ☐. (Check appropriate box)

(b) I ..... (do, do not) live with my wife; if not, her address is Does not apply

(c) We were married at Does not Apply (Place) on ..... (Date)

2. I have Does not Apply (Number) children under 18 years of age of whom ..... (Number) live with me in my home.

3. The following persons, other than those shown above, are wholly or partially dependent upon me for support. I contribute the amounts, and they have income, as shown. (Use added sheet if necessary.)

Name	Age	Relationship	Approximate Income (Annual)	Amount Contributed by Me
Address			$	$
Name	16			

[fol. 41]

(c) I have been a minister of the ..... (Name of sect or denomination) since ..... (Month) (Day) (Year)

(d) I ..... (have, have not) been formally ordained (e) If so, my ordination was performed on ..... (Month, day, year)

by ..... (Ecclesiastical official performing the ordination) at ..... (City and State)

2. (a) I ..... (am, am not) a student preparing for the ministry under the direction of .....

..... (Name of church or religious organization) in a theological or divinity school.

(b) I am attending the ..... (Name of theological or divinity school)

located at .....

3. I ..... (am, am not) a student preparing for the ministry under the direction of .....

....., pursuing a full-time course of instruction (Name of church or religious organization)

leading to my entrance into ..... (Name of theological or divinity school)

located at ....., in which I have been pre-enrolled.

Series VII.—CONSCIENTIOUS OBJECTION TO PARTICIPATION IN WAR IN ANY FORM

INSTRUCTIONS.—You should complete this series by signing the statement below, requesting a Special Form for Conscientious Objector (SSS Form No. 150), from the local board, if, by reason of religious training and belief you are conscientiously opposed to participation in war in any form. DO NOT SIGN THIS SERIES UNTIL YOU HAVE READ CAREFULLY.

BY REASON OF RELIGIOUS TRAINING AND BELIEF I AM CONSCIENTIOUSLY OPPOSED TO PARTICIPATION IN WAR IN ANY FORM AND FOR THIS REASON HEREBY REQUEST THAT THE LOCAL BOARD FURNISH ME A SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR (SSS FORM NO. 150) WHICH I AM TO COMPLETE AND RETURN TO THE LOCAL BOARD FOR ITS CONSIDERATION.

..... (Signature)

Series VIII.—FAMILY STATUS AND DEPENDENTS

INSTRUCTIONS.—You are required to complete this series, and to furnish such other information as required by the local board.

1. (a) I have never been married ☒; I am a widower ☐; I am divorced ☐; I am married ☐. (Check appropriate box)

(b) I ..... (do, do not) live with my wife; if not, her address is does not Apply

(c) We were married at Does not Apply (Place) on ..... (Date)

2. I have Does (Number) children under 18 years of age of whom not Apply (Number) live with me in my home.

3. The following persons, other than those shown above, are wholly or partially dependent upon me for support. I contribute the amounts, and they have income, as shown. (Use added sheet if necessary.)

NAME ADDRESS	AGE	RELATIONSHIP	APPROXIMATE INCOME (ANNUAL)	AMOUNT CONTRIBUTED BY ME
NAME ADDRESS			$	$
NAME ADDRESS			$	$
NAME ADDRESS			$	$
NAME ADDRESS			$	$

NOTE.—You should submit to the local board on a separate sheet attached to this questionnaire any additional information concerning your status with respect to persons dependent upon you for support which you believe should be considered by the local board.

[fol. 41]

16

Series IX.—PRESENT OCCUPATION

1. You are required to check each of the following boxes appropriate to your case, to complete all other required entries in this series, and to furnish such added information as required by the local board.

(a) I am now working on a farm, orchard, or ranch. [ ] | If this box is checked, complete Series X.

(b) I am now working in a nonagricultural occupation. [ ] | If this box is checked, complete this series.

(c) I am now a full-time student. [X] | If this box is checked, complete Series XII.

(d) I am now an apprentice. [ ] | If this box is checked, complete this series.

(e) I now have no employment nor am I a full-time student. [ ] | If this box is checked, complete Items 7 and 8 of this series.

2. The job I am now working at is (give full title, for example: Construction draftsman, turret-lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc.):

does not apply

3. I do the following kind of work in my present job. (Be specific. Give a brief statement of your duties.):

Study.

4. In my present occupation, I am (Check one box only)

(a) A regular or permanent paid employee, working for salary, wages, commission, or other compensation [ ]. I have worked ____ years in my present occupation, and I (do, do not) expect to continue indefinitely in it. does not apply

(b) A temporary or occasional employee [ ]; I expect that my present job will end about (Date) ____. //

(c) An apprentice under a written or oral agreement with my employer, which expires (Date) ____ [ ]. //

(d) An independent worker, working on my own account, not hired by anyone, and not hiring any help [ ]. //

(e) Working for my father or for the head of my family, but receiving no pay [ ]. //

(f) An employer or proprietor hiring ____ (Number) paid workers [ ]. //

5. My employer is 4467'th
(Name of organization or proprietor, not foreman or supervisor; enter "Self" if self-employed)

(Address of place of employment: Street, or R. F. D. Route, City, and State)

whose business is does not apply
(Nature of business, service rendered, or chief product)

6. In my present occupation (complete all Items)—

(a) I was employed by present employer on (Date) ____

(b) I entered job described in Items 2 and 3, this series, on 10 Dec 24 (Date)

(c) I am paid at the rate of $ 1.00 per hour [ ]; day [ ]; week [ ]; month [ ]. (Check appropriate box)

(d) I work an average of 48 hours per week.

7. Other business or work in which I am now engaged is ____
(Nature of business, if none, enter "None")

[fol. 42]

(c) I am now a full-time student. [X] | If this box is checked, complete Series XII.

(d) I am now an apprentice. [ ] | If this box is checked, complete this series.

(e) I now have no employment nor am I a full-time student. [ ] | If this box is checked, complete items 7 and 8 of this series.

2. The job I am now working at is (give full title, for example: Construction draftsman, turret-lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc.):

does not apply

3. I do the following kind of work in my present job. (Be specific. Give a brief statement of your duties.):

Study.

4. In my present occupation, I am (Check one box only)

(a) A regular or permanent paid employee, working for salary, wages, commission, or other compensation [ ]. does not apply
I have worked ____ years in my present occupation, and I (do, do not) expect to continue indefinitely in it.

(b) A temporary or occasional employee [ ]; I expect that my present job will end about ____ (Date) //

(c) An apprentice under a written or oral agreement with my employer, which expires ____ (Date) [ ]. //

(d) An independent worker, working on my own account, not hired by anyone, and not hiring any help [ ]. //

(e) Working for my father or for the head of my family, but receiving no pay [ ]. //

(f) An employer or proprietor hiring ____ (Number) paid workers [ ]. //

5. My employer is ... does not apply
(Name of organization or proprietor, not foreman or supervisor; enter "Self" if self-employed)

(Address of place of employment. Street, or R. F. D. Route, City, and State)

whose business is does not apply
(Nature of business, service rendered, or chief product)

6. In my present occupation (complete all items)--

(a) I was employed by present employer on ____ (Date)

(b) I entered job described in Items 2 and 3, this series, on ____ (Date)

(c) I am paid at the rate of $ ____ per hour [ ]; day [ ]; week [ ]; month [ ]. (Check appropriate box)

(d) I work an average of ____ hours per week.

7. Other business or work in which I am now engaged is ____ (Nature of business; if none, enter "None")

8. Prior work experience Hardly good letters for inmates ...

NOTE. You may attach to this page a statement giving additional information which you think the local board should consider in determining your classification, which statement will then become a part of this questionnaire. Your employer may submit to the local board any information concerning your employment which he thinks the local board should consider in determining your classification.

16 45744 4

Series X.—AGRICULTURAL OCCUPATION

INSTRUCTIONS.—You are required to complete this series if you work on a farm, orchard, or ranch, and shall furnish such added information as required by the local board.

If the items do not apply to you, enter "Does Not Apply" across this space.

1. I work on or operate a farm, orchard, or ranch as (Check appropriate boxes)—

(a) Sole owner-operator of the farm ☐.

(b) Joint owner-operator with ..... (Name) (Address) ☐.

(c) Hired manager for ..... (Name) (Address) ☐.

(d) Cash tenant or renter..... ☐.
(e) Standing rent tenant..... ☐.
(f) Share cropper..... ☐.
(g) Share tenant..... ☐.

My agreement with ..... (Name of landlord)

expires ..... (Month) (Day) (Year)

(h) Wage hand (hired man)..... ☐.
(i) Unpaid family worker..... ☐.

..... (Name and address of employer)

2. I have been engaged in farm work continuously since ..... (Date) 3. I ..... (do, do not) live on the farm where I work.

4. I ..... (am, am not) actually and personally responsible for the operation of the farm where I work.

5. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	Number of Each Now on Farm

6. Total value of products sold from this farm during the last crop year $.....

7. Principal products marketed during the last two years .....

8. The number of year-round workers on this farm is ..... (Number) of whom ..... (Number) are hired hands.

9. I am paid at the rate of $..... per hour ☐; day ☐; week ☐; month ☐. (Check appropriate box)

10. Other facts which I consider necessary to present fairly the farming or farm work I have described and my connection with it as a ground for classification are (if none, enter "None") .....

11. Other business or work in which I am now engaged .....

(Name) (Address)

(d) Cash tenant or renter..... ☐.
(e) Standing rent tenant..... ☐.
(f) Share cropper..... ☐.
(g) Share tenant..... ☐.
(h) Wage hand (hired man)..... ☐.
(i) Unpaid family worker..... ☐.

My agreement with _____ (Name of landlord)

expires _____ (Month) (Day) (Year)

_____ (Name and address of employer)

2. I have been engaged in farm work continuously since _____ (Date) 3. I _____ (do, do not) live on the farm where I work.

4. I _____ (am, am not) actually and personally responsible for the operation of the farm where I work.

5. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	Number of Each Now on Farm

6. Total value of products sold from this farm during the last crop year $_____

7. Principal products marketed during the last two years _____

8. The number of year-round workers on this farm is _____ (Number) of whom _____ (Number) are hired hands.

9. I am paid at the rate of $_____ per hour ☐; day ☐; week ☐; month ☐. (Check appropriate box)

10. Other facts which I consider necessary to present fairly the farming or farm work I have described and my connection with it as a ground for classification are (if none, enter "None") _____

11. Other business or work in which I am now engaged _____ (Nature of business; if none, enter "None")

12. Prior work experience _____

NOTE.—You may attach to this page a statement giving any additional information which you think the local board should consider in determining your classification, which statement will then become a part of this questionnaire. Your employer may submit to the local board any information concerning your employment which he thinks the local board should consider in determining your classification.

o—10—62716-4

9

[fol. 43]

18

Series XI.—COMPLETED EDUCATION

INSTRUCTIONS.—You are required to complete this series.

1. I have completed 6 (Number) years of elementary school, 3 (Number) years of junior high school, and 3 (Number) years of high school.
2. I WAS (was, was not) graduated from high school.
3. I have completed the following schooling other than elementary and high school (if none, enter "None"):

Name of College, University, Preparatory, Trade or Business School	Course of Study	Length of Time Attended and Degrees or Certificates Granted
Reed College	FRESHMAN	From 10/24/56 to 6/1/57

Series XII.—STUDENTS

INSTRUCTIONS.—You are required to complete this series in addition to Series XI if you are a full-time high school or college student unless you have completed Series VI above. If you believe that you should be placed in a deferred class because of your student status you should file with the local board the necessary supporting evidence. If not applicable, write "Does Not Apply" across this space.

1. (a) I am a full-time student at REED College (Name of institution)

located at Portland 2, Oregon, majoring in History (Course of study),

preparing for TEACHING (Occupation or profession)

(b) I expect to receive from this institution a B. A. (Kind of certificate, diploma, or degree; if none, enter "None")

on JUNE, 1960 (Date)

(c) I intend to take an examination for license in NONE (Profession) (If none, enter "None") on _____ (Date)

Series XIII.—CITIZENSHIP

INSTRUCTIONS.—(1) You are required to complete Items 1 and 2 of this series.

1. I was born at Greenville (Town or county) Calif. (State) U.S.A. (Country) on July 6, 1938 (Date)
2. I am a citizen or subject of United States of America (Country)

INSTRUCTIONS.—(2) You are also required to complete Items 3 and 4 of this series if you are not a citizen of the United States.

3. I have been admitted to the United States for _____ (Permanent/temporary)

residence on _____ (Date of entry)

4. My Alien Registration Receipt Card Number is _____

INSTRUCTIONS.—If you have not been admitted to the United States for permanent residence, you must attach to this page a supplemental statement setting out the date you first entered the United States, with the dates of each subsequent departure and reentry when applicable. You should accompany this statement with any documentary evidence in your possession verifying your claimed alien status.

Series XIV.—COURT RECORD

INSTRUCTIONS.—You are required to complete this series. If you have no court record, enter "None."

1. I have been convicted of crimes, other than minor traffic violations, as recorded below.
List all convictions, last conviction first.

Offense (Last conviction)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence
	NONE		

[fol. 44]

		4-1113

Series XII.—STUDENTS

INSTRUCTIONS.—You are required to complete this series in addition to Series XI if you are a full-time high school or college student unless you have completed Series VI above. If you believe that you should be placed in a deferred class because of your student status you should file with the local board the necessary supporting evidence. If not applicable, write "Does Not Apply" across this space.

1. (a) I am a full-time student at REED College (Name of institution)

located at Portland 2, Oregon, majoring in History (Course of study),

preparing for Teaching (Occupation or profession)

(b) I expect to receive from this institution a B. A. (Kind of certificate, diploma, or degree; if none, enter "None")

on JUNE, 1960 (Date)

(c) I intend to take an examination for license in NONE (Profession) (If none, enter "None") on _____ (Date)

Series XIII.—CITIZENSHIP

INSTRUCTIONS.—(1) You are required to complete Items 1 and 2 of this series.

1. I was born at Greenville (Town or county) Calif. (State) U.S.A. (Country) on July 6, 1938 (Date)

2. I am a citizen or subject of United States of America (Country)

INSTRUCTIONS.—(2) You are also required to complete Items 3 and 4 of this series if you are not a citizen of the United States.

3. I have been admitted to the United States for _____ (Permanent/temporary)

residence on _____ (Date of entry)

4. My Alien Registration Receipt Card Number is _____

INSTRUCTIONS.—If you have not been admitted to the United States for permanent residence, you must attach to this page a supplemental statement setting out the date you first entered the United States, with the dates of each subsequent departure and reentry when applicable. You should accompany this statement with any documentary evidence in your possession verifying your claimed alien status.

Series XIV.—COURT RECORD

INSTRUCTIONS.—You are required to complete this series. If you have no court record, enter "None."

1. I have been convicted of crimes, other than minor traffic violations, as recorded below.
List all convictions, last conviction first.

Offense (Last conviction)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence
	NONE		

2. I am not (am, am not) now being retained in the custody of a court of criminal jurisdiction, or other civil authority.

Specify does Not Apply (Awaiting trial, on parole, etc.)

[fol. 44]

Series XV.—PHYSICAL CONDITION

INSTRUCTIONS.—You are required to complete this series. If you answer any of the questions listed below by "Yes" and believe yourself physically disqualified for service in the Armed Forces you should attach an affidavit from your physician, hospital, or sanatorium to support your claim.

1. Were you ever rejected for service in the Armed Forces? Yes ☐; No ☒.
2. If the answer to Question 1 is "Yes," show (1) where ..... (2) when .....
3. Do you have any physical or mental condition which, in your opinion, will disqualify you from service in the Armed Forces? Yes ☐; No ☒.
4. If the answer to Question 3 is "Yes," state the condition from which you are suffering .....

.....

5. Are you now, or have you ever been, an inmate or a patient in a mental hospital or institution? Yes ☐; No ☒.
6. Are you now, or have you ever been, an inmate or a patient in a tuberculosis hospital or sanatorium? Yes ☐; No ☒.
7. If the answer to Question 5 or Question 6 is "Yes," give the name and address of each hospital, institution, or sanatorium .....

.....

.....

.....

8. Have you had treatment from a physician for any operation or serious illness within the last 5 years? Yes ☐; No ☒.
9. If the answer to Question 8 is "Yes," state the condition from which you suffered and give the name and address of the physician who attended you, and the approximate dates of each treatment .....

.....

PRECAUTIONARY INSTRUCTIONS

You may attach to this page any additional statement which you believe should be brought to the attention of the local board in determining your classification.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. You are required to make the registrant's certificate. 2. If you cannot read, the questions and your answers thereto shall be read to you by the person who assists you in completing this questionnaire. 3. If you are unable to sign your name, you shall make your mark in the space provided for your signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended.)

I, Forest Britt Peter, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are (are, are not) in my own handwriting.

Registrant sign here ☞ Forest Britt Peter

(Signature or mark of registrant)

.....

(Signature of witness to mark of registrant)

Date May 27, 1952

.....

(Signature of witness to mark of registrant)

If another person has assisted you in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because .....

.....

(For example: registrant unable to read and write English, etc.)

Date .....

.....

(Signature of person who has assisted)

[fol. 45]

(Registrants Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President	Vote Yes	Vote No
3/4/58	Issued Form 150 (Form for Consc. Objector) eg		
	7 PA) [illegible]	2	0
6-18-59	C137 mailed		
	[illegible]		
JUL 13 1959	[illegible]		
7-21-59	Letter of appeal received - dated July 19, 1959 - timely Request for personal appearance.		
7-23-59	C-310 mailed Personal Appearance granted- Scheduled for Aug. 3, 1959		
1959	Case reviewed after personal appearance Not reopened	2	0
8-4-59	Form 110 mailed		
8-13-59	File Forwarded to Appeal Board		
8-19-59	Cover Sheet returned from appeal board - Letter to be Initial by Bd. Members		
9-8-59	Reviewed & not reopened	2	0
9-8-59	Form 1 [illegible]	2	0
9-9-59	File Forwarded to Appeal Board		
10-8-59	Appeal Board For Selective Service System in the Northern Federal Judicial District of the State of California has tentatively determined that the registrant should not be classified in Class I-O or in a lower class. Elwood R. Olsen		
11-18-60	Cover Sheet returned from appeal board -Classified 1-A	5	0
11-18-60	Form 110 mailed		
7-20-61	SS Form 223 mailed (Order to report for Phy Exam 8-30-61)		
9-12-61	Failed to report for PIP		
OCT 2 1961	[illegible]		
	[illegible]	2	

[fol. 46]

SELECTIVE SERVICE SYSTEM MINUTES

6-18-59	C137 mailed		
JUL 13 1959			
7-21-59	Letter of appeal received - dated July 19, 1959 - timely Request for personal appearance.		
7-23-59	C-310 mailed Personal Appearance granted- Scheduled for Aug. 3, 1959		
AUG 3 1959	Case reviewed at personal appearance but not reopened	2	0
8-6-59	Form 110 mailed		
8-13-59	File Forwarded to Appeal Board		
8-19-59	Cover Sheet returned from appeal board - Letter to be Initial by Bd. Members		
9-8-59	Reviewed and not reopened	2	0
9-8-59	Forwarded to appeal Board	2	0
9-9-59	File Forwarded to Appeal Board		
10-8-59	Appeal Board For Selective Service System in the Northern Federal Judicial District of the State of California has tentatively determined that the registrant should not be classified in Class I-O or in a lower class. Elwood R. Olsen		
11-18-60	Cover Sheet returned from appeal board -Classified 1-A	5	0
11-18-60	Form 110 mailed		
7-20-61	SS Form 223 mailed (Order to report for Phy Exam 8-30-61)		
9-12-61	Failed to report for PIP		
SEP 8 1961			
		2	
10-3-61	Mailed S Form 304 (Delinquency Notice)		
10-13-61	SS Form 252 mailed (Order to report for Induction 11-22-61)		
11-29-61	Papers ret'd from Ind. Sta. (Failed to submit to Ind.)		

SELECTIVE SERVICE SYSTEM—CLASSIFICATION QUESTIONNAIRE
MINUTES OF ACTION—CONTINUED

NAME OF REGISTRANT	SELECTIVE SERVICE NO
PETER, Forest Britt	4 53 38 188

Dates	Minutes of Actions by Local Board, Appeal Board, and on Appeal to the President	Vote Yes	Vote No
1-22-62	SS Form 301 mailed U.S. Attorney		
6-7-62	SS Form #1 & 101(file) to SHQ		

[illegible]

To be used to provide additional pages of SSS Form No. 100 when more space is required for recording Minutes of Actions by Local Board, Appeal Board, and on Appeal to the President.

SSS Form No. 100-a (Revised 10-11-41)

13

..... so in plain English:

I am opposed to all war.

I don't believe human beings should kill each other.

I am opposed to all violence.... for whatever reason.

I believe that wars will only end when men refuse to murder one another-for whatever reason.

I believe these things as a man and as a revolutionist.

For I believe wars will only end when the present murderous forms of society are allowed to die--- and all men are at last permitted to live together as brothers.

-- from An Astonished Eye
Looks out of the Air

-by Kenneth Patchen

I concur with the statements of Mr. Patchen that are listed above.

Forest Britt Peter
Portland May 22, 1957
Oregon

...TCE SYSTEM
...O "D"

[Fol. 50] KENNETH PATCHEN

I don't believe human beings should kill each other.
I am opposed to all violence... for whatever reason.
I believe that wars will only end when men refuse to murder one another-for whatever reason.
I believe these things as a man and as a revolutionist.
For I believe wars will only end when the present murderous forms of society are allowed to die--- and all men are at last permitted to live together as brothers.

-- from An Astonished Eye
Looks out of the Air
-by Kenneth Patchen

I concur with the statements of Mr. Patchen that are listed above.

Forest Britt Peter
Portland May 22, 1957
Oregon

SELECTIVE SERVICE SYSTEM
ALAMEDA COUNTY GROUP "D"
MAY 29 1957
Rm. 230, 1079 [illegible] Street
Hayward, California

[Fol. 501]
KENNETH PATCHEN AND HANDWRITTEN NOTATION

I would like to request a form that would state my classification as that of a Conscientious Objector. I object to war in any form.

Forest Britt Peter

SELECTIVE SERVICE SYSTEM
ALAMEDA COUNTY GROUP "D"

MAR 4 1950

Rm. 230, 1079 "B" Street
Hayward, California

17.

[fol. 51]

HANDWRITTEN REQUEST OF FOREST BRITT PETER FOR FORM

SELECTIVE SERVICE SYSTEM

Form approved.
Budget Bureau No. 33 R-118.2.

MAR 10. 1958

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No. 4 | 53 | 38 | 188

Date of Issuance March 4, 1958

Date received back at local board .....

LOCAL BOARD NO. 83
Alameda County

Rm. 230, 1079 "B" Street
Hayward, California
(LOCAL BOARD STAMP)

Name PETER, FORREST BRITT
(Last) (First) (Middle)

Address 928 Evergreen Ave,
(Number and street or R. F. D. route)

San Leandro, Ala., California
(City, town, or village) (County) (State)

This form must be returned on or before March 10, 1958
(Five days after date of mailing or issue)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form No. 100).

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service in the Armed Forces.

.....
(Signature of registrant)

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

.....
(Signature of registrant)

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President [illegible]

[fol. 52]

Selective Service No. 4 | 53 | 38 | 188

Date of mailing March 4, 1958

Date received back at local board .....

LOCAL BOARD NO. 53
Alameda County

Rm. 230, 1079 "B" Street
Hayward, California
(LOCAL BOARD STAMP)

Name PETER, FOREST BRITT
(Last) (First) (Middle)

Address 928 Evergreen Ave.,
(Number and street or R. F. D. route)

San Leandro, Ala., California
(City, town, or village) (County) (State)

This form must be returned on or before March 10, 1958
(Five days after date of mailing or issue)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form No. 100).

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service in the Armed Forces.

_____
(Signature of registrant)

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

_____
(Signature of registrant)

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President, or shall, if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate, and any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or to both such fine and imprisonment.

Series II.—RELIGIOUS TRAINING AND BELIEFS

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Do you believe in a Supreme Being? Yes ☐ No ☐ It depends on the definition. see below

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation.

ANSWER ON A SEPERATE Sheet

SSS Form No. 150 (Revised 6-22-42). This replaces all previous issues. (1) 16—42256-6

18.1

[fol. 52]

25

LEILANI	LAFFLIN	WOODSTOCK MD.	19	52

4. Give the name and address of your parents and indicate whether they are living or not.

MR. CLYDE L. PELER 915 EVERGREEN AVE. SAN LEANDRO CALIF.
MRS. ROBERTA PELER 915 EVERGREEN AVE. SAN LEANDRO CALIF.

5 (a) State the religious denomination or sect of your father NONE

(b) State the religious denomination or sect of your mother NONE

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

NO

2. Are you a member of a religious sect or organization? NO (Yes or no) If your answer to question 2 is "yes," answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

(b) When, where, and how did you become a member of said sect or organization?

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

None.

[fol. 55]

21

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

Answer is on seperate sheet.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

There is no one at present on whom I rely for guidance

5. Under what circumstances, if any, do you believe in the use of force?

Answer is on seperate sheet

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

None enters my mind at the moment.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

No.

[fol. 33]

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended	
			From—	To—
McKinley Elementary School	Public Elementary	San Leandro, Calif.	1946	1950
Bancroft Jr. High School	Elementary Sec.	San Leandro, California	1950	1953
San Leandro High School	Secondary Public	San Leandro, California	1953	1956
Reed College	Private	Portland, Oregon	1956	1958

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to

5. Under what circumstances, if any, do you believe in the use of force?

Answer is on seperate sheet

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

None enters my mind at the moment.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

No.

[Fol. 53]

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended From—	Dates Attended To—
McKinley Elementary School	Public Elementary	San Leandro, Calif.	19 46	19 50
Bancroft Jr. High School	Elem. Junior Sec.	San Leandro California	19 50	19 53
San Leandro High School	Secondary Public	San Leandro California	19 53	19 56
Reed College	Private	Portland Oregon	19 56	19 58

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked From—	Period Worked To—
Odd jobs in a Shoe Store	MR. Rodman	14th Broadway Oakland	19 49	19 51
Marking and Posters	MR. Mills	San Leandro High	19 55	19 56
INVENTORY	SMILAS CLOTHIERS	12th and Grove	19 58	19 58
			19	19
			19	19

10—28831-1

19.

26

Series 11.--- Religious Training and Beliefs

2. Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.

I consider this belief to be superior to my obligation to the state.

In so far as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands...(it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

3. I would say that the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic american culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups.

4. The use of violence(physical force) compromises the ends one seeks in action. I consider war to be the greatest example of this. The use of non-violence in the freeing of India and the Mongomery bus strike is an example of the kind of force I do believe in.

[fol. 54]

3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence From	To
THYLERSVILLE	CALIFORNIA	BOX 6		
Chico	CALIFORNIA		19 39	19 40
Little City	CALIFORNIA		19 [illegible]	19 42
ARBUCKLE	CALIFORNIA		19 42	19 42
HAYWARD	CALIFORNIA	1616 PARADISE Blvd.	19 42	19 46
SAN LEANDRO	CALIFORNIA	928 EVERGREEN AVE.	19 46	19 56
Portland	OREGON	Woodstock Blvd.	19 56	19 58

4. Give the name and address of your parents and indicate whether they are living or not.

MR. Clyde L. PETER 928 EVERGREEN AVE. SAN LEANDRO Calif.

MRS. ROBERTA PETER 928 EVERGREEN AVE. SAN LEANDRO Calif.

5 (a) State the religious denomination or sect of your father NONE

(b) State the religious denomination or sect of your mother NONE

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

NO

2. Are you a member of a religious sect or organization? NO (Yes or no) If your answer to question 2 is "yes," answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

(b) When, where, and how did you become a member of said sect or organization?

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

[illegible]

Series V.—REFERENCES

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

Name	Full Address	Occupation or Position	Relationship to You
Denny Wilcher	2619 Parker Berk. Col.	Student	acquaintance
Robert Brown	1514 Bruntsville Ave Oak.		friend

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended).

I, Forest Britt Peter, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are (are, are not) in my own handwriting.

Registrant sign here ☞ Forest Britt Peter
(Signature or mark of registrant)

Denny Wilcher
(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

(For example registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

[fol. 56]

[fol. 61]

To: Local Board No. 53
Alameda County
Rm. 230 1079 B Street
Hayward, California

July 19, 1959

Dear Sirs,

I have been notified that as of the 13th day of July of this year my draft classification is "1-A". On the 10th day of March 1958 I applied through form 150 for civilian alternative service.

There seems to be a difference of opinion between you (Local Board #253) and I as to my draft status. I here by request a hearing through which I may state my beliefs and present new evidence and information concerning my claim as a consientious objector.

I will be in the bay area after the twenty fifth of this month.

Yours truly,

/s/ Forest Britt Peter

Forest Britt Peter
1819 Dwight Way
Berkeley, California

[Stamp—Hayward Local Board—Group "D"—Alameda County—JUL 21, 1959—Room 230, Broadway Building—Professional Center—1079 B. Street—Hayward, California]

[fol. 62]

SELECTIVE SERVICE SYSTEM

LOCAL BOARD NO. 53

Alameda County

JUL 23 1959

Room 230, Broadway Building
Professional Center, 1079 B Street
Hayward, California

(Local Board Stamp)

Forest Britt Peter
1819 Dwight Way
Berkeley, Calif.

SS No. 4-53-38-188

Dear Sir:

Your request for a personal appearance before your local board is acknowledged.

We have made an appointment for you to appear before your local board at the address given above at 7:15 p.m. on (Monday) Aug. 3, 1959.

Section 1624.2 (b) of the Selective Service Regulations provides that "At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing by the registrant and, in either event, shall be placed in the registrant's file."

By Direction of the Local Board

/s/ J. Berry
Clerk

C-310 (27May58L)

[fol. 63]

[Stamp—Selective Service System—Alameda County Group "D"—AUG 3, 1959—Rm. 230, 1079 "B" Street—Hayward, California]

Local Board #[redacted]53
Hayward California

August 3, 1959

Dear Sirs,

I'm introducing three new pieces for my file that I hope will give you a better understanding of my position as a Conscientious Objector. An addition to Series 2 questions 1 and 2. An addition to Series III question 2 and this letter.

I have also asked several people to supply information as to the sincerity of my convictions against participation in war. These reference letters have not been completed. I'll send them in when I receive them and will appreciate your adding them to my file if an appeal becomes necessary.

My convictions will not allow me to participate in war or any military institution. As I understand the word religious, I think my stand has a religious basis.

I am willing to do civilian alternate service. I am also aware of the law regarding unrecognized conscientious objectors and am prepared to meet the consequences of maintaining my stand without official approval.

Yours truly,

/s/ Forest Britt Peter

[fol. 64] Series III—General Background

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Dates	*Type of work*	*Name of Employer*	*Emp. Address*
6/14/58–8/31/58	Postal Carrier	San Leandro Post Office	San Leandro Calif.
11/59	Photographer Ass.	Emil Pine	384 Diamond San Francisco
4/59–8/59	Full time volunteer	Acts For Peace	1730 Grove Berkeley
7/59	Shiprights Helper	Moore Dry Dock	Ft. of Adeline Oakland

[Stamp—Selective Service System—Alameda County Group "D"—AUG 3, 1959—Rm. 230. 1079 "B" Street—Hayward, California]

[fol. 65] August 3, 1959

The following is an addition to my answers of questions 1 and 2 Series 11 form 150 Selective Service System.

All real living is meeting
—Martin Buber

I have this God inside of me. To be truthful, I don't know if it's a long or short God or even a Superior God (much less a Supreme Being) and I have no idea what its sex is. I'm even worried about calling it God. After all a great deal of death has been done in the name of God.

This God, this God I have inside of me goes off every once in a while and opens me to the motions, to beauty and sadness in the universe. That is, now and again I feel the compulsion to meet the world around me. I'm filled with wonder, I'm possessed as it were, I feel so good I think I'm crazy. So my God isn't beyond me, it's within me and opens me to Godliness in the world.

I see an army over this world of wonder. Such stupidity and wasted energy. It's liable to kill us all.

/s/ Forest Britt Peter
8/3/59

[Stamp—Selective Service System—Alameda County Group "D"—AUG 3, 1959—Rm. 230, 1079 "B" Street—Hayward, California]

[fol. 66] August 3, 1959

PETER, Forest Britt 4-53-38-188

Registrant personally appeared with a Mr. Pickus of 1730 Grove—Berkeley, Calif. to help him in explaining his case.

Registrant stated he did not belong to any church or religion. He has been influenced by books he has read and has formed his own personal reasons for opposing war.

Mr. Pickus verified the fact that the registrant didn't have any religion but felt he was sincere in his belief and thought a Conscientious Objector could be granted without religion but because you were really opposed to war.

Registrant stated he would be willing to work in any hospital but felt he could not take part in the life of the army.

/s/ JEANETTE BERRY.
Clerk

[Stamp—Local Board No. 53—Alameda County—Rm. 230, 1079 "B" Street, Hayward, California]

[fol. 67]

Local board #53 Aug. 7, 1959
Hayward, Calif.

Dear Sirs,

Thank you for your time the other night at the hearing. I'm sorry you were unable to classify me as a Conscientious Objector.

The decision however, was not a surprise considering my lack of "proof" and your lack of moral courage.

I just hope the war that you support won't kill us all in the next few years.

To the future,

/s/ FOREST BRITT PETER

8/7/59

[Stamp—Hayward Local Board—Group "D"—Alameda County—AUG 10, 1959—Room 230, Broadway Building Professional Center—1079 B. Street—Hayward, California]

[fol. 73]

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

(Emblem)

Address Reply to the
Division Indicated
and Refer to Initials and Number

JUL 22 1960

Chairman, Appeal Board, Northern
District of California
Selective Service System
Room 540, Phelan Building
760 Market Street
San Francisco 2, California

Re: Forest Britt Peter
Conscientious Objector

Dear Sir:

As required by section 6(j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the captioned matter and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Mr. Earl B. Wixcey, a Hearing Officer for the Department of Justice.

The information obtained from the inquiry and considered by the Department of Justice in arriving at its

[Stamp—California, Northern District Appeal Boards—JUL 29 1960—Room 540 Phelan Building, 760 Market Street, San Francisco 2, California.]

recommendation is contained in the Resumé of the Inquiry attached hereto and made a part hereof.

Registrant was born in Greenville, California on July 6, 1938. The registrant, as well as his parents, are not known to attend church or to have any religious affiliation. He graduated from high school in San Leandro, California in June 1956 and thereafter attended Reed College in Port-
[fol. 74] land, Oregon, withdrawing in February 1958 and ranking 176 in a class of 192. He took courses in the summer of 1957 at the University of California at Berkeley, receiving grades of B and C and he also attended San Francisco State College in the summer of 1958, receiving a failing grade. His SSS Form 100, received by his local board in May 1957, made no claim of conscientious objection. His SSS Form 150, received by his local board in March 1958, contained no signature to either Part (A) or (B) of Series I and in answer to Question 1 of Series II as to his belief in a Supreme Being, the registrant did not sign either the "yes" or the "no" box and wrote, "It depends upon the definition. See 2 below. Answer is on separate sheet." The separate sheet attached to the registrant's Form 150 stated that the registrant considered it a violation of moral law to take human life. His local board retained him in Class I-A after a personal appearance by registrant before it and he appealed.

Annexed hereto and made a part hereof are Exhibits A through F submitted to the Department of Justice on behalf of the registrant.

Registrant appeared before the Hearing Officer in San Francisco, California on February 29, 1960, accompanied by an advisor and two witnesses. The registrant acknowledged having received a copy of the resumé and stated that it was "clearly honest". Registrant's advisor criticized the resumé for apparent distortions, reporting style, and mistakes in dates. The registrant said he was unemployed at the time of the hearing but was looking for work. He told the Hearing Officer that he had no orthodox religious back-
[fol. 75] ground and that he had attempted to define what he thought was a religious position in the statement which

he made and which is attached to his SSS Form 150. The Hearing Officer asked the registrant whether he was about to found a new religion and the registrant answered, "No". The registrant indicated disagreement with his advisor over submitting in evidence the letter appearing as Exhibit D, hereto annexed, because the letter was said to have summarized the registrant's views but that the registrant submitted the letter for its value as a reference. The Hearing Officer reported that he told the registrant that belief in a Supreme Being was required and that at no time did the registrant suggest that he had a belief in a Supreme Being; that in answering the Hearing Officer's question, "Are you prayerful?" the registrant had stated, "No, I don't pray." The registrant took exception to the mention of the nude photographs in the resumé and stated that the pictures were works of art executed by a sister of his roommate and were not photographs but were paintings.

Registrant's witnesses, who wore beards, volunteered the thought that registrant's belief most nearly resembled Buddhism. Registrant's advisor told the Hearing Officer that he had been in the American Friends Service Committee for ten years. The Hearing Officer reported that the registrant's advisor spoke of the registrant's sincerity in glowing terms; that the Hearing Officer thereupon read the pertinent portions of the Act relating to religious training and belief and belief in a Supreme Being and that the registrant's advisor stated that he thought the registrant's position to be sufficient or was becoming sufficient in that respect.

The Hearing Officer reported that throughout the hearing the registrant was advised of the paucity of evidence of [fol. 76] substantial religious conviction and was invited to improve his claim and that in the opinion of the Hearing Officer the registrant did not do so. The Hearing Officer concluded that the registrant evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act and the Hearing Officer recommended that the claim of the registrant, based upon grounds of conscientious objection, be not sustained.

The Department of Justice finds that the registrant's claim is not sustained. It, therefore, recommends that the registrant's claim be not sustained by your Board.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,

/s/ T. OSCAR SMITH

T. Oscar Smith
Chief, Conscientious-Objector Section

[fol. 77]

Resumé of the Inquiry

Re: Forest Britt Peter

Conscientious Objector

Registrant was born in Greenville, California on July 6, 1938. The registrant, as well as his parents, are not known to attend church or to have any religious affiliation.

The records of San Leandro High School, San Leandro, California show that the registrant attended there from September 1952 until his graduation in June 1956, ranking 179 in a class of 280. A teacher in this high school advised that the registrant had average ability and interest in the political science field; that he was strongly introverted and strongly independent in his thinking. He believed that the registrant is the type who would establish strict personal codes rather than identify himself with a group and that he would have the moral conviction to become a conscientious objector if he should establish a personal moral code to the effect that it was sinful to take human life. Another teacher in this high school advised that the registrant's family is one of extreme liberalism but on a practical basis, the registrant's father being a labor union official and that the registrant is perhaps a misdirected idealist; that the registrant is an independent thinker based on his own reading and experiences; that he is not of brilliant or superior intelligence but is the type of person who desires

to experience the field of ideas and is interested in the fields of art and classical music; that the registrant has come to the unshakable opinion that the leaders of the world, including the United States, are pursuing a part of folly and that something will be done which will exterminate the human race. He believed the registrant formed his own personal conception so that he could not conscientiously participate in military service as an implement of present day policy. In recent conversations the instructor had noticed that the registrant had become more adamant in his position but that his reasons have become confused and that the registrant finds it difficult to put his position in words. He advised that the registrant moved from his [fol. 78] home for about eight months in 1958 and lived with some "beatniks" in San Francisco in pursuit of development of his interest in art, music, and literature and that the beatniks are a notorious, unorganized group in San Francisco who live a Bohemian existence and are unique in dress and living habits; that the registrant has shared a flat with four or five others but became disgusted with the sexual deviates, alcoholics, and moral degenerates who were part of that group and he moved to Berkeley, California where he became part of a group known as "Acts for Peace". He believed registrant's claim to be based entirely upon his moral decision. The records of Reed College, Portland, Oregon show that the registrant attended there from September 1956 until his withdrawal in February 1958, ranking 176 in a class of 192 in his first year; that he took courses in art, biology, German, humanities, politics, and physical education and was a prospective major in politics and history; that he was the subject of faculty action on deficiency in scholarship on several occasions, roomed on the campus and received no credit for attendance at the 1957-1958 school year. An official of the college advised that the registrant had caused no trouble and was of good character and would be in good faith in any claim that he made. The records of the University of California at Berkeley show that the registrant, during the summer of 1957, took courses in Eighteenth Century French Literature and Greek Tragedy in which he received grades of B and C respectively. The records of San Francisco

State College show that the registrant had registered there in the summer of 1958 taking courses in Elementary French as an auditor and a History Survey of Jazz course in which he received a grade of F and that he discontinued attending college.

A representative of a civic organization in San Leandro advised that the registrant had worked for that organization distributing posters and advertising to local merchants from time to time during a two-year period from 1955 to 1956 requiring eight to ten hours' work on each occasion; that he had never discussed personal beliefs with the registrant but believed him to be an outstanding, independent thinker and believed he would challenge established doctrine on the basis of his own decision. A representative of the post office in San Leandro advised that the registrant had worked there as a substitute mail carrier from June to [fol. 79] August 1958 and had later had similar employment at Berkeley, California; that he was quiet, shy, and reticent but was efficient, industrious, and apparently of superior intelligence in the dispatch of his duties. The records of the American Building and Maintenance Company at Oakland, California show that the registrant worked there from August 29, 1958 until October 3, 1958 when he quit to accept a position with the United States Post Office. A supervisor of the registrant in this job advised that the registrant was employed as a hall man and was the only maintenance man in the building over week ends and discharged his duties faithfully and dependably. He believed registrant to be of good character. A photographer in San Francisco advised that the registrant had worked for him during October and November 1958 and was satisfactory and reliable and was released when business fell off; that he found registrant to be a serious-minded youth attending college and taking a minimum course. The records of a drydock company at Oakland show that the registrant worked there as a carpenter's helper from June 22 to July 10 and that his file contained no unfavorable information. The records of the post office at Berkeley show that the registrant worked there as a substitute mail carrier from October 12 to November 4, 1957; that he had filed an application form in which he had answered, "No", to Questions 16

and 17 on the form as to whether he had ever been a Communist or a member of a Fascist organization and in space 24 of the form for detailed answers to the above questions, he had written as to Questions 16 and 17, "Nor am I a Democrat or Republican"; that his file contained a statement of resignation stating, "I do not want to drive mail trucks. I misunderstood the duties of a substitute carrier but the above is a matter of conviction with me and therefore I offer my resignation." A post office official advised that the registrant had been asked to drive a mail truck and had refused and was therefore asked to resign; that on the initial interview the registrant had been advised that part of the duties of a substitute carrier would be the driving of mail trucks in the collection of mail from various points in the city and he did not recall the registrant's voicing any opinion of opposition to driving mail trucks. A supervisor of the registrant advised that the registrant did not mingle with the other employees but was a good worker and quick to learn the details of his job; that the driving of a truck by the registrant was delayed to afford the regis- [fol. 80] trant the opportunity of getting a driver's license; that he had contacted the registrant on November 23, 1959 and told him that he was scheduled to drive a truck that evening and that the registrant had stated that he had a valid driver's license but that he did not want to drive a truck because he had two or three good friends who had been seriously injured in auto accidents and that he understood that the registrant resigned the following day.

A neighbor at San Leandro advised that she had been acquainted with the registrant's family for several years and that the parents are average individuals who participate in the neighborhood group as do other residents but that the registrant is unlike his parents; that he is an introvert, an intellectual type who spends his time reading "heavy" literature and listening to ultra-classical music; that he is not mentally or emotionally unstable but is different in tastes and habits from the normal individual; that his parents have been most disappointed in the registrant's decision to claim conscientious objection; that neither the registrant nor his family attend church at least on a regular basis and she knew of no religious affiliation on their

part. She believed that the registrant's conscientious objection is apparently based upon his own thinking. Another neighbor in San Leandro advised that her children gather discarded paper and magazines from the neighbors and that she has noticed copies of a magazine called "Playtime" which features nude photos which she considers objectionable and which she hides from her children. She believed registrant should perform military service the same as any other qualified person. Another neighbor advised that the registrant exhibited no interest in sports or physical activities and had no girl friends and in conversations which her son has had with the registrant she had noted that the registrant had no enthusiasm for military service and she believed the registrant is the type of person who would not adjust to the close associations with other individuals found in military life. A landlady in San Francisco advised that the registrant and another had rented an apartment from her from October to the end of December 1956; that the registrant and his friend maintained the partment in a constant filthy condition, played their record player loudly at night and she did not like the nude photographs of [fol. 81] females on the walls and told the registrant that "beatniks" were not welcome in the apartment but that people visited there who appeared to her to be "beatniks"; that the registrant himself wore a beard, appeared unwashed, unkempt, and filthy and was very likely a beatnik himself. She advised that she had observed no homosexual indications on the part of the registrant but that he appeared to be lazy and work when and where he pleased and did not go to class because he told her that he disagreed with the academic hierarchy involved in formal classroom education; that he attempted to appear intellectual and to give the impression of knowing a lot about philosophy, heavy literature, and music. She believed it likely that he is trying to avoid military service and is using the conscientious-objector claim for that purpose. An associate of the registrant, named as a reference who objected to having been named as such and stated that the registrant did not have his permission to use him as a reference, advised that he had helped the registrant fill out his conscientious-objector form and stated that he had served a prison term as a

result of his claiming conscientious objection during World War II; that as a result today he is an "anarchist-pacifist" and does not believe in the numerous investigations being conducted by the United States and that he would willingly discuss matters with the registrant's local board but not with a representative of an investigative agency. An associate of the registrant at San Leandro advised that he was well-acquainted with the registrant but that the registrant found it impossible to make close friends with anyone; that the registrant is intelligent and well regarded but has no desire to direct his intellect into normal channels; that he quits jobs without apparent reason and that he quit Reed College after two years for no apparent reason; that he is strong in his beliefs and is almost always in disagreement with the majority opinion on any controversial issue; that he has discussed military service with the registrant and that the registrant had made only casual comments and he could not decide whether the registrant is simply trying to evade military service or objecting to it on a moral basis. He advised that the registrant had no formal church or religious affiliation.

A reference who is a close friend of the registrant at the University of California advised that the registrant found high school dull and unchallenging and spent most of his [fol. 82] time studying the violin and taking only essential courses; that he entered college through a college board examination which speaks for his basic knowledge; that he is not conventional in his habits but is not dangerous to society; that he does not drink, has no organizational affiliations, and the writers that have influenced him most are William Blake, poet; D. H. Lawrence, novelist; and Martin Buber, Jewish theologian; that after terminating his education in Reed College he spent most of his time reading things concerning Oriental religion, including Chinese and Indian philosophy and has become familiar with writers like Alan Watts, a former Anglican minister who presents a half hour program over a radio station at Berkeley; that the registrant has no church affiliation but is neither atheistic nor agnostic and the trend of his thinking is towards mystical writings, mystical in the sense that they are not philosophical. The word "philosophical" would imply that

there is a desire to explain everything. The reference believed that the basis of calling the registrant's stand religious is that life is a mystery and cannot be explained; that this is a mystical trend and the writers who have influenced the registrant are mystical; that his discussions with the registrant have revealed that the registrant believes that the whole scheme of things which would make killing a justifiable and meaningful act is wrong and that the registrant is firm and sincere in his convictions. The Executive Secretary of "Acts for Peace" advised in November 1959 that he had known the registrant for several months and that the registrant had been employed on a full-time basis from April to August 1959 and on a part-time basis from August to the date of the interview; that he had accompanied the registrant at the time of the registrant's appearance before the local board and had discussed military service with him at considerable length and believed him to be sincere in his claim; that as nearly as he can determine the registrant's feelings developed during the past two or three years and do not come from any orthodox religious training or denomination or belief but from an inner conscience which is opposed to the "organizing to destroy"; that the registrant did not call this conception "God" but that he considered the registrant to be a religious person within the broad meaning of the term; that [fol. 83] he considers the registrant immature and that "he has not found himself yet" but fully understands the consequences of maintaining his claim; that he is of high personal integrity and honesty; that he is a poet, very alive to the beauties of nature and very responsive to them; that he has observed nothing homosexual on the part of the registrant; that he regards him as somewhat of an enigma but that he is sincere in his conscientious-objector claim.

Credit and criminal records were negative.

Prepared: February 4, 1960

[fol. 84]

THE WALDEN FOUNDATION

a non-profit educational corporation

2619 Parker Street THornwall 3-1532

Berkeley 4, California

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Ida Wilcher
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Lee McRae
Audrey Goodfriend
David Koven
Stan Gould
Mary Lou Gould
Barbara Stevens

Feb. 27, 1960

Hearing Officer
U.S. Dept. of Justice
Post Office Bldg.
San Francisco, Calif.

Dear Sir:

I would like to submit this statement in reference to the hearing for Mr. Britt Peter, who is appealing his Selective Service classification.

My personal acquaintance with Mr. Peter goes back over two years, when he sought me out because of my wide knowledge of objectors and their problems. I was a conscientious objector in World War 2, and have worked with several organizations primarily concerned with their status.

Mr. Peter informed me in our first meeting that he had decided that he could not accept military service, and in many meetings since we have discussed this position in such fashion that I have a complete sense of the sincerity and depth with which it is held.

I am particularly concerned to attest to the sincerity of Mr. Peter in seeking objector status. He has demonstrated

his conviction convincingly in the past two years in both statement and volunteer work in the cause of peace. I have known hundreds of objectors in camps, prison and civilian life, and the most convinced usually devote time in this manner to the peace cause.

As to the nature of the conviction held in this instance, I wish to point out that it is rooted in that ethical sense which the best thinkers of all periods have identified as related to a religious sense. In fact, many religious leaders and writers have insisted this sense is of the very nature of religion. I would like to point out further that Mr. Peter acquired this conviction growing up in a culture which has its roots in the ethical traditions of Christianity and Judaism, and that the teachings of these traditions, at best, indicate a reverence for human life which can easily lead to a rejection of killing under and possible circumstances. I would also like to note that all other great world religious traditions advocate precepts of the same nature.

Yours truly,

/s/ Denny Wilcher

Denny Wilcher, Chairman,
Walden Found. Inc.

Advisory Council:

Frank N. Freeman, Dean *emeritus,* School of Education, University of California; John Way and Alice Way, Co-Directors, Pacific Ackworth Friends School; Mark Luca, Instructor in Art Education, University of California; Lawrence Speiser, Speiser and Williams, Attorneys *legal.*

[fol. 85]

K. Rexroth
250 Scott St. SF CAL

KPFA (FM)

94.1 MC, Channel 231
Phone: THornwall 8-6767

2207 Shattuck Avenue
Berkeley 4, California

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Hearing Officer

Selective Service

Dear Sir,

In the past few weeks I have had several interviews with Mr. Britt Peter about his pending appeal to you as a conscientious objector. He has impressed me with the firmness and soundness of his convictions. I come from a family originally Schwenckfelders, a strict pacificist sect somewhat like the Mennonites or Amish, although I am certainly not one. I have had considerable experience down the years with Friends, Brethern, and similar groups, and with the small group of Catholic COs. I was, during the Second World War, one of the three local secretaries of the Fellowship of Reconciliation. During those years I was also on a national board to advice COs who had specially difficult problems. I was myself classified 4E although I was in fact too old to be drafted. This is just to state my only qualifications as a judge of the sincerity of an appellant, not to boast.

I believe that Britt Peter is a conscientious objector in the strictest sense of the word. I believe that his opinions are due to religious conviction within the meaning and intention of Selective Service regulations. It is true that he does not attend regularly any church, let alone one of the historic "Peace Churches." But then, neither did the founders of these very churches attend any then existing church regularly, and neither did the founders of most of the

world's religions. We live today in a world in which most religion is personally arrived at and held, as any clergyman can tell you. This is especially true of persons whose religion involves objection to war—although their founders condemned war, Buddhists, Friends, even Brethern and Mennonites in fact in many cases support war—and this is liable to alienate young men who have arrived at their convictions through personal struggle and meditation. I am myself an Episcopalian, but I am under no delusions that my church as a body opposes war.

There is no question in my mind of Britt Peter's sincerity. Nobody in his senses is going to try to avoid service in the army in this difficult way today. A young man has everything to gain from going into the army—travel, education, all sorts of advantages after his discharge. By claiming conscientious objection he only makes a great deal of trouble for himself, submits himself to terrific nervous strain, and, of course stands a good chance of being sent to jail.

I have had a great deal of experience dealing with young men in exactly Britt Peter's position at this moment and I have a pretty sharp eye for those that are just out "to beat the draft." He seems thoroly convinced, and certainly more religious in any meaning of the word than a very large percentage of people who attend church regularly.

faithfully

/s/ Kenneth Rexroth

Kenneth Rexroth

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[fol. 86]

Mr. Earl Wixsey, Special Hearing Officer for the Department of Justice

Dear Mr. Wixsey:

The resume of the inquiry re: Forest Britt Peter, Conscientious Objector, has recently been read by me, and, as a contributor to this resume, I am particularly disturbed by the inaccuracy of the reporting. The statement that I made, as it now stands, is almost completely unrecognizable. It is distorted, inaccurate, biased, slanted—in short, it is almost a classic example of the kind of writing we as English teachers would never allow in high school. Let me be specific: The most important statement I made, a statement I repeated *many, many* times, that Brit Peter is above all else completely sincere in this decision *never* once appears in this resume. The fact that Brit came out of a thoughtful, liberal home, a home of ideas, is reported, "the registrant's family is one of extreme liberalism." This is a distortion and it is the kind of thing found throughout this resume. It is claimed that I described the "beatniks" as a "notorious, unorganized group in San Francisco . . . " and that Brit became disgusted with the "sexual deviates, alcoholics, and moral degenerates who were part of that group . . . " This again is not an accurate report of what I said; I do not think of these people as "notorious" or that they are deviates, etc.

I was, at the time of the interview, very frank, very cooperative, and very honest with the agent, but never again will I make so free a statement unless I have the assurance that I will be allowed to sign my statement and say, "Yes, that's what I said."

Yours truly,

/s/ James R. Gray

James R. Gray
Chairman, English Department
San Leandro High School

[fol. 87]

Dear Brit—

You have convinced me that you are sincere and I cannot imagine anyone questioning you on that, or that the consequences of not being believed are so drastic.

Certainly yr behavior since I've known you is consistent with yr beliefs, moreover, they will probably conflict with the service's and cause you harm.

I know yr position to be personal, not supported by an orthodox religion, but as sincere; I join you as witness to yr convictions on this matter and say they are yr orthodox religion.

Evidently one must have supporting him, and his real convictions, an organized and establisht and 'approved' religion. To be acting individually on what one is positive is right is questionable and it seems these days considered *wrong*. There isn't much else he can do but collect signatures and support frm 'unapproved' sources. Which you are doing damn it to prove of all things you are sincere.

Searching for a common wd to cal yrself you'd call yrself mystical, you'd call yr thot, yr feeling, mysticism—which itself is not susceptible to an exact definition. Such a wd will scare the hell out of yr judges (it is a marriage of [fol. 88] philosophic and religious thot, supremely individual and personal)—I hope to God they think you too crazy to serve with the boys, too crazy to shoot straight or in the correct direction.

I see this is a hearing and not a trial you're having.

Sincerely—

/s/ Ebbe

Ebbe Borregaard
1711 Buchannan
SFrancisco 15

[fol. 89]

Feb. 29, 1960.

To Whom it May Concern;

This is to assert that my wife and I have had an extended discussion with Britt Peter, and that he is clearly not a Christian Conscientious Objector, nor does he claim to be one. But we do believe that he is sincere in his stand as a conscientious objector. We do not agree with this stand, but we do not want it to appear, from a casual remark, that we doubt his sincerity.

Signed;

/s/ Mr. Horace Duncan

/s/ Mrs. Gertrude Duncan

[fol. 91]

The following are additions to questions, #4, #6 and #7 series II of form 150. I'm introducing this new material into my file in the hope that you'll come to a better understanding of my position as a Conscientious Objector.

Question #4 Series II:

Give the name and present address of the individual upon whom you rely most for religious guidance.

I have met many men who have touched my life. Some were religious others were not. Most are far away now and if I ever gave my life over to them for guidance, it was only for a moment and then we each went our own way through the world.

Hugh slept and worked at the Catholic Worker in New York City. He slept on a table, with a telephone book for a pillow. Hugh handed out hot meals to other Bowery characters who came into the building to be fed and he preyed a great deal.

From him I saw that to be religious is to give. Not just give material things like a plate of hot food (although this is very important), but to give yourself over to the activity

in which you believe. To be responsible for your actions in the world.

"The religious man is not freed from responsibility he has exchanged the torment of the finite, pursuit of effects for the motive power of the infinite, he has got the mighty responsibility of love for the whole untraceable world-event for the profound belonging to the world before the face of God. He has to be sure, abolished moral judgements forever; the evil man is simply one who is commended to him for greater responsibility, one more needy of love, but he will have to practise, till death, itself, decision in the depths of spontaneity, unruffled decision, made ever anew, the right action. Then action is not empty, but purposive, enjoined, [fol. 92] needed part of creation; but this action is no longer imposed upon the world, it grows on it as if it were non-action."

—Martin Buber

Like Buber I believe the works of the "religious man" are organic, very much of this world. I receive guidance from many people and things in this world.

All My life
Brought me here NOW
Every event
Yes, thinskin even
The mistakes.

Question #6 Series II:

Describe the actions and behavior in your life which in your opinion most cospicuosly demonstrates the consistency and depth of your religious convictions.

That is for other people to say of me. I know only that at times I fell as if I were "playing in the world" that part of this realization is a knowledge of the wastefulness of physical violence (the state's continual mobilization for war). I can't handle what religious convictions I have as if they were a commodity like a gun or the star on a general's shoulder. There would be something very cold blooded about listing the actions in my life that were religious in

nature. Let others speak of any "acts of mercy" I may have performed.

Question #7 Series II

Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

In college I often had discussions with my fellow students on the topic of war and conscientious objection. During [fol. 93] these talks I brought in the views herein expressed. Some of the people I talked to were Darrell Woodman, Fred Petersen, Irv Williams, Jake Stern, and Chris Hulse. Chris Hulse and I often took long walks in the night, talking about everything under the sun and we both agreed time and again that the military institution and war were colossal follies. That no cause could justify the slaughter and tremendous expenditure envolved in maintaining or using an army. We also spoke; said nothing, wondered at the beauties of the night.

For about four months last year I worked as a full time volunteer at Acts For Peace. As a result of my association there I talked to many people about conscietious objection. Some of those I've had discussions with are Robert Pickus Denny Wilcher, John Martinson (a C.O.), Mott Cannon, Sara Pickus, Rob Harding, Rog Moss, Cynthia Duffield, Robert Brown, and John Little.

I've participated in several poster marches in San Francisco and New York calling for the abolishment of the use of nucular weapons.

Also some people hearing of my claim for Conscientious Objector classification have become very interested in the issue and I've tryed to explain to them both the mechanics of the law in cases like mine (as I experience them) and also the basis of my claim. Some of these people are James Gray a school teacher, Jack Hillis a school teacher, Doug Peter a relative of mine who is in the army, Ebba Borraguarde a poet in San Francisco and Kenneth Rexroth a poet, artist and critic.

Most written statements are in this file. Although I did put together an anthology of Peace Poetry for Acts for [fol. 94] Peace and am a contributing editor for the publication *Utopian Papers*.

Finally there are the ever present talks with myself on the subject of Conscientious Objection, war, the make up of the "religious man", what I see in the world etc. The continuous distellation of experience that brings to an attitude the heart of conviction.

/s/ FOREST BRITT PETER

Feb. 29, 1960

[fol. 95]

July 29, 1960

Forest B. Peter
1730 Grove Street
Berkeley, California

SS No. 4 53 38 188

Dear Sir:

Your case, which involves a claim of conscientious objection, is to be reviewed by this Appeal Board at its next regular meeting.

In accordance with the provisions of Section 6(j) of the Universal Military Training and Service Act, as amended, your file was forwarded to the United States Department of Justice for inquiry and hearing. The Department of Justice having completed its inquiry and hearing has submitted to this Appeal Board its report and recommendation which is being made a part of your Selective Service file.

A copy of this recommendation is attached hereto for your information. You may, within thirty (30) days of the date of the mailing of this letter, file with this office a written reply to the recommendation of the Department of Justice. Your reply will be made a part of your file and

will be considered by this Appeal Board in disposing of your case.

NORTHERN CALIFORNIA APPEAL BOARD,

By .....
Appeal Board Clerk

Enc.

[fol. 96]

[Stamp—California, Northern District Appeal Boards—AUG 29 1960—Room 540 Phelan Building, 760 Market Street, San Francisco 2, California]

Aug 6—1960

Sirs.

I wish the following included in my file as a Conscientious Objector

1. Letter from John Doe
2. Statement on the Anaversery of Hiroshima attack
3. Comments on Hearing Officers report
4. And the further statement of the religious motivation of my objection

The letter signed John Doe comes from a friend of mine in San Francisco. When hearing about my objection and this current encounter with the appeals, board he wanted to do something to aid me. The result is his letter. As well as being a beautiful statement of his own beliefs I think it also throws light on the psychology of my own objection. I am in more than partial agreement with what he says and wish the statement included in my file.

Thank you,

/s/ FOREST BRITT PETER

[fol. 97] August 6, 1960

Sirs:

One of the most difficult things anyone can do is to specify precisely what his religious convictions are, especially if one does not identify with a tangible religious group involving rites or meetings.

I believe no one has a right to force another; I don't understand why one would have the desire.

If one claims to be a conscientious objector, he is either a conscientious objector or a coward or an anarchist.

As to cowardice

It has been written, "Great Mars no longer attends these wars."

It is not a question of pride; it is a question of pride.

As to anarchy

it misses the point.

I believe in this country. Primarily in a poetic way: a meeting of all races. I believe in America as a thing that happened when men began to outgrow those subdivisions and saw his responsibility was to mankind.

I also believe in this country among the others; I believe that here is where the life is. I believe in its government. Though its history is dirty, as is the history of other countries, as is the history of man, I believe in the ultimate rightness of America, I believe in the ultimate rightness of man—for this reason I recoil from the idea of involving myself with any military procedure these days when man has come so near to arranging his suicide. The horror of this state of affairs is that I am in noway in agreement with this motivation, that it is not understandable to me, that, in my own eyes it is a terrible absurdity. This implies I feel there is a misplacement of power. But I leave it for you to perceive this is not a profession of anarchism. I am only sorry that being but an individual my action in the negative will be of little influence, whereas an individual supporting these procedures could be of extreme consequence.

Patriotism may prove guise enough for another to justify killing, but not for me. Self defense is the justification, even to an offender, but the situation is one contrived: false to a few, the pleasure of some, the cause and perhaps responsibility of others (though in this case I cannot believe the latter); and there is guilt in allowing oneself to be swept into the contrivance.

I don't explain my or Britt Peter's religion, but make it apparent by telling my stance; as anyone's religion is not what they say it is, but is seen in their dealings with us.

My very constitution would rebel from killing a man in such circumstances. I could not help but realize my enemy is not this man but those who forced me there.

Your cause is yours
cause for anger?
cause for reflection?
cause for genuflection?
cause for poetry?
cause you would oppose?

I am as godless as the gods.
My cause is theirs.
I am not conscientious, that is for Britt Peter to be;
I am conscious.

. . . John Doe

[fol. 98]

Aug. 6—1960

II

Dear Sirs,

15 years ago today the United States droped an Atomic Bomb on the Japanese city of Hiroshima. If any victory was gained, it is not celebrated as a holiday on this date.

Instead men the world over pause and consider the justification of war and the consequence of that act.

My mind does not dwell on the mutilation of that cities people. I do though, damn the logic of a State that could find justice in such an act distruction.

III

I'm going to do two things in this letter. 1—State my disaprovel of the hearing officer's report and 2—once again define the nature of my objection to (and participation in) any military institution.

The report reads like a surrealist night mare. Who ever wrote it jumps from point to point as if there were no [fol. 99] context at all to work from. Even so I see certain themes coming out that were in the resumé of my F.B.I. inquiry. I mean your continued attempts to discredit my sencerity.

In the F.B.I. resumé the possibility of homosexuality on my part was brought up at least three times. And in this hearing officer's report there is a placing of importance on a piece of information that has even less to do with my objection than the aforementioned inquiry into my sexual tastes. I refer to the nude paintings on the wall at a room I occupied in San Francisco some three years ago. This reference appears without preface between two paragraphs reguarding my religious conviction, in the hearing report. Perhaps if I had hung a foreign nations flag or a photograph of Dr. Schweitzer on this wall, you would be justified in raising your eye brows. But I can't understand why the hearing officer's report should waste time mention- [fol. 100] ing anything as irrelevent to the State as the portrayal of the human figure, unless ~~the~~ he (the hearing officer) took some perverse delight in returning to the subject or (which seems more likely,) wished to discredit my sencerity.

It is also mentioned in the hearing officer's report that one of the witnesses wore a beard. This is true, but so what? May I remind the members of the appeal board that both Jesus Christ and Abraham Lincoln wore beards; men who I think you would accept ~~as~~ at this late date, as credible witnesses.

I feel cheapened in bringing these points up again and wouldn't if I hadn't been provoked by the attempts of the hearing officer's report to once again caste doubts as to

my sencerity. After he (Mr. Wixey) had asured me at the hearing, that I had extablished a very sound case as to my sencerity. He considered this of prime importance along with the extablishment of my religious conviction, in [fol. 101] deciding the merits of one's objection.

I find these attacks on my personal character distasteful not because they are damaging but because they are done under the guise of legality and/or sanctity.

I would think that after all the trouble the F.B.I and the Hearing Officer have gone to in casting such doubts on my intellectual, moral, and sexual character, that you, the members of the appeals board would begin to have doubts also, as to my ability to fit the role of good ~~soldied~~ soldier.

There are other distortions in the hearing officer's report as well. For one thing I cannot remember saying that the F.B.I. resumé was 'clearly honest'. As a matter of fact the objections to the F.B.I. resumé credited to my advisor Mr. Pickus, were made by me before Mr. Pickus arrived at the hearing.

[fol. 102] My main objection however, is to what the report leaves out. It is not at all clear in my mind if this is the Hearing Officer's report itself or merely a summary. I have no way of knowing since I do not have access to my file. If it is a summary I should like to see the actual report.

The report leaves the impression that it is an account of the events of the hearing. If it ~~it~~ is, it leaves an awful lot out. I would like to mention some of the omisions.

The hearing lasted about two hours and the discussion was not as cursury as the report would lead you to believe. Most of the time was devoted to a discussion regnarding the nature of my religious conviction.

In the report given me there is no accounting of any testimony I gave in an attempt to define my position, save the six points of evidence labeled A through F which were not printed or refered to thereafter in the report I received.

[fol. 103] Nor does the report list the reasons given by my advisor Mr. Pickus for his belief that my objection

"was sufficient under the government's definition of religious conviction."

I think that this evidence demands your consideration. Particulary that of my advisor if it survives anywhere in the writen word. If the hearing officer failed to record Mr. Pickus' statement, I think it a shocking omision and begin to wonder at the actual reason for the hearing.

I will now go into (once again) the nature of my religious conviction and how it relates to my objection.

IV

I have never directly answered 'yes' or 'no' to your question "Do you believe in a Supreme Being" because I do not know what you mean by the phrase. Any theologian would also wonder as to your meaning. And perhaps also [fol. 104] wonder at the wisdom of ~~legaling~~ legally defining the essence and existence of a God.

I have tryed however to give a picture of my own 'religiousness' and show how it motivates my objection.

I can't honestly say 'a Supreme Being directs creation, I DON'T KNOW. However, I'm moved by many of the elements in the world—in creation.

You might say I believe in them. I believe in these elements because they are there. I think this process—call it belief if you like—is different than simply knowing as if love or a knowledge of God were just facts. Looking into the world I find solace or pain but no answers; A voice that says made in heaven by the Supreme Being as defined by the United States Government is not there, but space is; Room for limitless understanding and contern.

Or:

[fol. 105] We say, that a tree is beautiful. But why? Because the tree moves us. The branches, the leaves, the very form of the tree, the forces it exemplifies. I do not choose to name this tree God as if that would explain its reason or essense. This is a very distinctive tree and deserves a new name and a reverence that is open to the endless

number of things the tree tells us—of form, life and death, of ourselves; our own existence.

I don't think this is lack of belief. I'm upheld by creation, finding ease as well as pain there.

THERE'S NO FALLING OUT
OF THIS WORLD
OF LONG GRASS
AND BASS NOTES
THINSKIN, DON'T HOLD
ON SO.

I believe in elements of this creation like star or animal [fol. 106] motion. And I'd work toward an understanding with them called living relationship or form of love.

This is the conscious effort of my life and I have already suffered some reguarding it. The energy involved is considerable but I do not think it wasted, like that given to an Army or a selfish love. Nor do I know how wise I am in my devotion.

I say this for myself as much as for you. Through past experience I doubt your comprehension. I have a feeling that I'm trying to tell truth to a cigerette machine or standing in the path of a steam-roller. One that lacks understanding.

I say what I do in the face of consequence. And do not use the words or angle the government has given me, out of choice. The words must be my own or the thought is yours. It has always been my motive to *show* my objection not *prove* it for the reward offered legal objectors. My objection is not dependent on your approval, I live by it. [fol. 107] I could not live another way as in an army. There is a disinterest on my part in that groups activities (as my friend said: it is a question of pride.) nor ~~could I give mu~~ could I contribute to an institution that has the power to destroy all I do believe in

Yours truly,

/s/ FOREST BRITT PETER

[fol. 115] Forest Britt Peter
Aug. 15, 1961

Dear Sirs,

I will not appear for my Armed Forces Physical Examination August 30th, In accordance with my previously stated views and beliefs as a conscientious objector.

Yours,

/s/ Forest Britt Peter

Forest Britt Peter

[Stamp—Hayward Local Board—Group "D"—Alameda Coun—AUG 17 1961—Room 230, Broadway Building, Professional Center—1079 B. Street, Hayward, California]

[fol. 116] August 15, 1961

Dear Sirs,

". . . . so in plain English:

I am opposed to all war.

I don't believe human beings should kill each other

I am opposed to all violence . . . for whatever reason

I believe that wars will only end when men refuse to murder one another for whatever reason

I believe these things as a man and as a revolutionist

For I believe wars will only end when the present murderous forms of society are allowed to die . . . and all men are at last permitted to live together as brothers."

—from an Astonished Eye

I concure with the statements of Mr. Patchen that are listed above.

May 27, 1957

Once again,

/s/ Forest Britt Peter

[Stamp—Hayward Local Board—Group "D"—Alameda Coun—AUG 17 1961—Room 230, Broadway Building, Professional Center—1079 B. Street, Hayward, California]

SELECTIVE SERVICE SYSTEM

Approval Not Required.

ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION

LOCAL BOARD NO. 53
1079 "B" St., Rm 2?
Hayward, Californ

(Local Board Stamp)

To

Forest Britt Peter
1730 Grove St.
Berkeley, Calif.

July 20, 1961
(Date of mailing)

SELECTIVE SERVICE NO.			
4	53	38	188

You are hereby directed to present yourself for Armed Forces Physical Examination to the Local Board named above by reporting at:

Local Board No. 53 1079 B St. Room 230 Hayward, California
(Place of reporting)

at 6:45 a. m., on the 30th (Day) of (Wednesday) August (Month), 19 61.
(Hour of reporting)

(Member or clerk of local Board)

If you wish to report direct to the examining station in Oakland, please contact this office at LU 2-5456

IMPORTANT NOTICE

TO ALL REGISTRANTS:

When you report for Armed Forces Physical Examination you will be forwarded to an Armed Forces Examining Station where you will be given a complete physical examination to determine whether you are physically qualified for service. Upon completion of your physical examination, you will be returned to the place of reporting designated above. You will be furnished transportation, and meals and lodging when necessary, from the place of reporting designated above to the examining station and return. Following your Armed Forces Physical Examination your Local Board will mail you a statement issued by the commanding officer of the station showing whether or not you are acceptable for service.

If you are employed, you should advise your employer of this order and inform him that the examination is merely to determine your acceptability for service. It is not an order to report for induction or an order to perform civilian work.

IF YOU HAVE HAD PREVIOUS ACTIVE OR INACTIVE MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR ANY RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE OF YOUR SERVICE WITH YOU. IF YOU WEAR GLASSES, BRING THEM WITH YOU. IF YOU ARE MARRIED, BRING PROOF OF YOUR MARRIAGE.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this Order and go immediately to that

Pol 118

LOCAL BOARD NO. [illegible]
1079 "B" St., Rm [illegible]
Hayward, Californ

(LOCAL BOARD STAMP)

To

Forest Britt Peter
1730 Grove St.
Berkeley, Calif.

July 20, 1961
(Date of mailing)

SELECTIVE SERVICE NO.			
4	53	38	188

You are hereby directed to present yourself for Armed Forces Physical Examination to the Local Board named above by reporting at:

Local Board No. 53 1079 B St. Room 230 Hayward, California
(Place of reporting)

at 6:45 a. m., on the 30th of (Wednesday) August, 19 61
(Hour of reporting) (Day) (Month)

[signature]
(Member or clerk of Local Board)

If you wish to report direct to the examining station in Oakland, please contact this office at LU 2-5496

IMPORTANT NOTICE

TO ALL REGISTRANTS:

When you report for Armed Forces Physical Examination you will be forwarded to an Armed Forces Examining Station where you will be given a complete physical examination to determine whether you are physically qualified for service. Upon completion of your physical examination, you will be returned to the place of reporting designated above. You will be furnished transportation, and meals and lodging when necessary, from the place of reporting designated above to the examining station and return. Following your Armed Forces Physical Examination your Local Board will mail you a statement issued by the commanding officer of the station showing whether or not you are acceptable for service.

If you are employed, you should advise your employer of this order and inform him that the examination is merely to determine your acceptability for service. It is not an order to report for induction or an order to perform civilian work.

IF YOU HAVE HAD PREVIOUS ACTIVE OR INACTIVE MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR ANY RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE OF YOUR SERVICE WITH YOU. IF YOU WEAR GLASSES, BRING THEM WITH YOU. IF YOU ARE MARRIED, BRING PROOF OF YOUR MARRIAGE.

If you are so far from your own Local Board that reporting in compliance with this order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this Order and go immediately to that Local Board and make written request for transfer for Armed Forces Physical Examination.

TO CLASS I-A AND I-A-O REGISTRANTS:

If you fail to report for Armed Forces Physical Examination as directed, you will be delinquent and will be immediately ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Universal Military Training and Service Act, as amended.

TO CLASS I-O REGISTRANTS:

The Armed Forces Physical Examination is given for the purpose of determining your acceptability for service. If you are found acceptable, you will be available, in lieu of induction, to be ordered to perform civilian work contributing to the maintenance of the national health, safety, or interest. If you fail to report for or to submit to the Armed Forces Physical Examination, you will be deemed to be available to be ordered to perform civilian work in the same manner as if you had taken the Armed Forces Physical Examination and had been found acceptable.

SSS Form No. 223 (Revised 3-30-60) (Previous printings may be used until exhausted.) US GOVERNMENT PRINTING OFFICE: 1960—O-646256

84

[fol. 118]

63

Approval Not Required.

SELECTIVE SERVICE SYSTEM

DELINQUENCY NOTICE

LOCAL BOARD NO. 53
1079 "B" St., Rm. NO
Hayward, California

(Local Board Stamp)

October 2, 1961
(Date Became Delinquent)

October 3, 1961
(Date of Mailing)

SELECTIVE SERVICE NO.			
4	53	38	188

To Forest (First) Britt (Middle) Peter (Last)

Address 1730 Grove St.
(Street and Number or RFD Route)

Berkeley (City, Town, or Village) Alameda (Zone) (County) California (State)

You are hereby notified that this Local Board has declared you to be a delinquent because of your failure to perform the following duty or duties required of you under the selective service law:

Failure to report for Armed Forces Physical Examination on August 30, 1961

LOCAL BOARD NO. 5
1079 "B" St., Rm. 210
Hayward, California

(Local Board Stamp)

October 2, 1961
(Date Became Delinquent)

October 3, 1961
(Date of Mailing)

SELECTIVE SERVICE NO.			
4	53	38	188

To Forest (First) Britt (Middle) Peter (Last)

Address 1730 Grove St.
(Street and Number or RFD Route)

Berkeley (City, Town, or Village) Alameda (County) California (State)

You are hereby notified that this Local Board has declared you to be a delinquent because of your failure to perform the following duty or duties required of you under the selective service law:

Failure to report for Armed Forces Physical Examination on August 30, 1961

/s/ A. C. AMES
(Member or Clerk of Local Board)

The President of the United States,

To

Forest Britt Peter
1730 Grove St.
Berkeley, California

LOCAL BOARD NO. 53
1079 B St., Rm 230
Hayward, California
(LOCAL BOARD STAMP)

October 13, 1961
(Date of mailing)

SELECTIVE SERVICE NO.			
4	53	38	188

GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report at Local Board No. 53 1079 B St. Room 230 Hayward, Calif
(Place of reporting)

at 6:00 a. m., on the 22nd (Wednesday) of November, 1961
(Hour of reporting) (Day) (Month)

for forwarding to an Armed Forces Induction Station.

/s/ A. C. AMES
(Member or clerk of Local Board)

IMPORTANT NOTICE

If you have had previous active or inactive military service, or are now a member of the National Guard or any reserve component of the Armed Forces, bring evidence of your service with you. If you wear glasses, bring them. If you are married, bring proof of your marriage. If you intend to apply for dependency benefits, bring proof of your relationship and the support contributed to the person or persons you claim as dependents.

Bring your Social Security Account Number Card. If you do not have one, apply at nearest Social Security Administration Office. If you have life insurance, bring a record of the insurance company's address and your policy number. Bring enough clean clothes for 3 days, but do not bring more than you can carry in a small suitcase or handbag. You should bring enough money to last 1 month for any personal purchases you may desire to make.

This Local Board will furnish transportation to the induction station where you will be examined, and, if accepted for service, you will then be inducted into a branch of the Armed Forces. If you are not accepted, return transportation will be provided.

Persons reporting to the induction station in some instances are found to have developed disqualifying defects since being examined and may be rejected for these or other reasons. Keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should inform your employer of this possibility. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly at the place specified above and at the hour and on the day named in this Order is a violation of the Universal Military Training and Service Act, as amended, and subjects the violator to fine and imprisonment. You must keep this form and bring it with you when you report for induction.

If you are so far away from your own Local Board that reporting in compliance with this Order will be a serious hardship and you desire to report to a Local Board in the area in which you are now located, go immediately to that Local Board and make written request for transfer of your delivery for induction, taking this Order with you.

SSS Form No. 252 (Revised 4-8-59) (Previous printings may be used until exhausted.) 87 U.S. GOVERNMENT PRINTING OFFICE : 1959—O-511824

[fol. 121]

65

[Stamp—Hayward Local Board Group "D"—Alameda County—OCT 16, 1961—Room 230, Broadway Building Professional Center—1079 B. Street, Hayward, California]

[fol. 122] Oct 11, 1961

To: Local Board No. 53
1079 'B' Street Rm 230
Hayward, California

Dear Sirs,

I recently received from you a notice of delinquency for my failure to report for an Armed Forces Physical Examination on August 30, 1961.

I do not consider myself delinquent. I remain as before, a conscientious objector to war and to all military institutions. I am a proponent of non violent action and reaction in communication and relationship with other human beings, and I could not and will not participate in a physical examination whose purpose is to define my fitness for service in the *Armed* Forces.

Once again,

/s/ Forest Britt Peter

[fol. 123] [Handwritten notation—4-53-38-188]

Nov 22, 1961

Dear Sirs,

I recently received your order for induction into the armed forces. The order asked that I report to the local board in Hayward on the 22nd of this month. I will appear. My reasons are as follows:

1—On the advice of my lawyer.

2—To bring before you, physical presence of my sincere opposition to war and the military institution.

I will be glad at that time to answer any questions you might bring up and will go through with any of the legal processes necessary to clarify my position.

However, I am still unwilling to answer any directives that go against my beliefs, pride or principles. And of course, I am unwilling and unable to pass that point in the induction process where I'd become a member of the armed forces instead of a civilian individual opposed to war and all military institutions.

I remain a proponent of non violent and creative alternatives to violence in international and personal affairs. I long for the day, and am committed to the day, when we would put down our self destructive notions and hankering for suicide. These notions and desires are manifest in one nations ego-centric arming against another. If not through passion or idea of justice, then through indifference and simple minded assent. Through lack of imagination. I long for the day when 'man is no longer wolf to man'.

I am an articulate (if not on political grounds, and least on the psychological level) objector to war and all military institutions, not just a 'draft dodger' or delinquent.

/s/ Forest Britt Peter

[fol. 125]

[Stamp—Selective Service System Alameda County Group "D"—NOV 29, 1961—Rm. 230, 1079 "B" Street, Hayward, California]

U. S. ARMY RECRUITING MAIN STATION
1515 Clay Street
Oakland 12, California

AMRCT-6 327 22 November 1961

SUBJECT: Selective Service Registrant's Refusal to Submit to Induction

To: U. S. Attorney
Northern District of California
422 Post Office Building
Seventh & Mission Streets
San Francisco, California

1. In compliance with the provisions of paragraph 40c (2), AR 601-270, dated 11 March 1960, as amended, the following information is submitted pertaining to Mr. *Forest Britt Peter*, a Selective Service registrant who refused to submit to induction on *22 November 1961*, at Armed Forces Induction Station, United States Army Recruiting Main Station, Det. (6040-06), *1515 Clay Street, Oakland 12, California.*

a. Forest Britt Peter—1730 Grove Street, Berkeley, California

b. Selective Service Number 4 53 38 188

c. Local Board No. 53, 1079 "B" Street, Rm. 230, Hayward, California

2. The name of the registrant appeared on the Selective Service System Delivery List, SSS Form 261, dated *22 November 1961*, indicating date of delivery as *22 November 1961*. The registrant reported to the Armed Forces Induction Station on *22 November 1961* and refused to be proc-

essed for induction in accordance with applicable provisions of Section II (Induction Processing), AR 601-270, as amended.

3. Mr. *Forest Britt Peter* was requested, but not required, to make a signed statement, dated, in his own handwriting, as follows: "I refuse to be inducted into the Armed Services of the United States." (Witnessed Statement attached.)

Yours truly,

/s/ NATHANIEL H. DUFFIELD

Nathaniel H. Duffield
2d Lt, AGC
Deputy for Induction

cc: State Director, Selective Service System of Sacramento, California

cc: Selective Service Local Board 53, Hayward, California

1. SEX: MALE	2. RACE	3. TOTAL YEARS MILITARY SERVICE	
4. DATE OF BIRTH: 6 Jul 28	5. PLACE OF BIRTH: Greenville, Calif	6. NAME, ORGANIZATION AND ADDRESS OF NEXT OF KIN	
7. PRESENT MILITARY OR CIVILIAN ADDRESS: APO, OAKLAND, CALIFORNIA		8. SERIAL NUMBER: AO: 5 53 38 188	
9. STATUS OR DESIGNATION		TIME IN THIS CAPACITY (Years)	LAST DAY WORKED

CLINICAL EVALUATION

ITEM NO.	(Comment upon all significant or abnormal findings. Enter appropriate item number before each comment. Continue in item 73 if necessary.)	NORMAL
	10. HEAD, FACE, NECK AND SCALP	
	11. NOSE	
	12. SINUSES	
	13. MOUTH AND THROAT	
	14. EARS—GENERAL (Incl. A. ext. canals) (Auditory acuity under items 70 and 71)	
	15. DRUGS (Perforation)	
	16. EYES—GENERAL (Visual acuity and refraction under items 69, 69 and 67)	
	17. OPHTHALMOSCOPIC	
	18. PUPILS (Equality and reacting)	
	19. OCULAR MOTILITY (Associated parallel movements, nystagmus)	
	20. LUNGS AND CHEST (Include breasts)	
	21. HEART (Thrust, size, rhythm, sounds)	
	22. VASCULAR SYSTEM (Varicosities, etc.)	
	23. ABDOMEN AND VISCERA (Include hernia)	
	24. ANUS AND RECTUM (Hemorrhoids, fistulae) (Prostate, if indicated)	
	25. ENDOCRINE SYSTEM	
	26. G-U SYSTEM	
	27. UPPER EXTREMITIES (Strength, range of motion)	
	28. FEET	
	29. LOWER EXTREMITIES (Except feet (Strength, range of motion))	
	30. SPINE, OTHER MUSCULOSKELETAL	
	31. IDENTIFYING BODY MARKS, SCARS, TATTOOS	
	32. SKIN, LYMPHATICS	
	33. NEUROLOGIC (Equilibrium tests under item 71)	
	34. PSYCHIATRIC (Specify any personality deviation)	
	35. PELVIC (Females only) (Check how done) ☐ VAGINAL ☐ RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.).

(Continue in item 73)

36. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)

O—Restorable tooth
/—Nonrestorable tooth
X—Missing tooth
XXX—Replaced by dentures
(6 X 6)—Fixed bridge, brackets to include abutments

RIGHT	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	LEFT
	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	

REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES

ACCEPTABLE

LABORATORY FINDINGS

37. URINALYSIS: A. SPECIFIC GRAVITY			38. CHEST X-RAY (Place, date, film number and result)
B. ALBUMIN	D. MICROSCOPIC		HEART AND LUNGS
C. SUGAR	NOT INDICATED		
47. SEROLOGY (Specify test used and result)	48. EKG	49. BLOOD TYPE AND RH FACTOR	50. OTHER TESTS
MICRO FLOC:			

94

[fol. 128]

73

INDUCTEE

RECORD OF INDUCTION

Form Approved
Budget Bureau No. 33-R010.4

(Local Board No. 83
Rm 230
Hayward, California
(Local Board of Origin Stamp)

SECTION I - GENERAL (Local Board Will Prepare From Latest Information Available)

1. LAST NAME - FIRST NAME - MIDDLE NAME
PETER, Forest Britt

2. SERIAL NUMBER (To be entered by Induction Station)

3. HOME OF RECORD (Number and street or rural route - if none so state - city or post office, county and state) (To be entered by Induction Station)

3a. CURRENT ADDRESS
1730 Grove St.
Berkeley, Calif.

4. SELECTIVE SERVICE NUMBER
4 53 38 188

5. DATE OF BIRTH
DAY 6 MONTH July YEAR 38

6. MARITAL STATUS
[X] SINGLE [ ] MARRIED [ ] DIVORCED [ ] WIDOWED

7. DEPENDENTS
a. NO. CHILDREN UNDER 18: 0
b. OTHER DEPENDENTS (Husband or wife, if married, and children indicated in Item 7a): 0

8a. PRIOR MILITARY SERVICE [ ] YES [X] NO (If "Yes", Complete Items Below)

b. ARMED FORCE
[ ] ARMY [ ] NAVY [ ] AIR FORCE [ ] MARINE CORPS [ ] COAST GUARD

c. COMPONENT
[ ] REGULAR [ ] USR [ ] RES [ ] NG

d. SERVICE NUMBER

e. DATE OF ENL., IND., APT. AND/OR ORDER TO ACTIVE DUTY

f. DATE OF DISCHARGE OR RELEASE

g. CHARACTER OF DISCHARGE OR SERVICE

h. REASON AND AUTHORITY FOR DISCHARGE OR RELEASE (Cite appropriate service regulation)

9a. PRESENT CIVILIAN TRADE OR OCCUPATION (Type of business)
Unemployed

b. LENGTH OF EXPERIENCE
YEARS MONTHS

10. EDUCATION

GRADE OR YEAR COMPLETED (Enter through all grades or years successfully completed) (Exclude trade or business schools)	ELEMENTARY AND HIGH SCHOOL												COLLEGE				POST GRADUATE			
	NONE	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	1	2	3	4

11. PLACE OF BIRTH
Greenville Calif.

12a. U.S. CITIZEN
[X] YES [ ] NO

IF NOT A U. S. CITIZEN

b. DATE OF ENTRY INTO U.S. FOR [ ] PERMANENT [ ] TEMPORARY RESIDENCE

c. ALIEN REGISTRATION RECEIPT CARD NUMBER

d. FOREIGN COUNTRY OF WHICH CITIZEN

e. IF NATURALIZED CITIZEN, GIVE DATE, PLACE, COURT OF JURISDICTION AND NATURALIZATION NUMBER

13a. CONVICTED OR ADJUDICATED OF CRIME OTHER THAN MINOR TRAFFIC VIOLATION (If "Yes", specify when, where, nature of court and sentence)
[ ] YES [X] NO

b. HELD IN CUSTODY OF LAW
[ ] YES [X] NO
IF ANSWER IS "YES", IS NECESSARY RELEASE OR WAIVER ATTACHED? [ ] YES [ ] NO

14. CONSCIENTIOUS OBJECTOR
[ ] CLASS I-A-O
[ ] CLASS I-O

15. PREVIOUSLY EXAMINED AND NOT ACCEPTABLE [ ] YES [X] NO (If "Yes", indicate the following) (Check one)
[ ] NOT ACCEPTABLE ON PREINDUCTION [ ] NOT ACCEPTABLE ON INDUCTION [ ] NOT ACCEPTABLE ON ENLISTMENT

SECTION II - LOCAL BOARD MEDICAL INTERVIEW

16. PHYSICAL DEFECTS (To be completed by Local Board)

a. LIST ALL DEFECTS AND DISEASES CLAIMED BY THE REGISTRANT AND ANY DEFECTS OR DISEASES WHICH THE REGISTRANT MAY HAVE, AND WHICH ARE KNOWN TO THE LOCAL BOARD (If no defects, indicate by "None")
None

b. ARE ANY OF THE DEFECTS OR DISEASES LISTED IN ITEM "a" ABOVE INCLUDED IN LIST OF DEFECTS (DSS Form 1425, as Rev.)? [ ] YES [ ] NO

c. REGISTRANT OR AFFIDAVIT REFERRED TO LOCAL BOARD MEDICAL ADVISOR [ ] YES [ ] NO

17. STATEMENT OF LOCAL BOARD MEDICAL ADVISOR (To be Completed If Item 16c Is "Yes")

FINDINGS

a. [ ] REGISTRANT DOES NOT HAVE DISQUALIFYING DEFECT(S) CLAIMED

[fol. 126]

Berkeley, Calif.

4. SELECTIVE SERVICE NUMBER				5. DATE OF BIRTH			6. MARITAL STATUS	7. DEPENDENTS	
4	53	38	188	Day: 6	Month: July	Year: 38	[X] SINGLE [ ] MARRIED [ ] WIDOWED [ ] DIVORCED	a. NO. CHILDREN UNDER 18: 0	b. OTHER DEPENDENTS (Relatives of wife, if married, and children indicated in item 7a): 0

8a. FORMER MILITARY SERVICE [ ] YES [X] NO If "Yes", Complete Items Below

8b. ARMED FORCES	8c. COMPONENT	8d. SERVICE NUMBER	8e. DATE OF ENL. IND. OR APP. ASSIGN. CHGD TO ACTIVE DUTY	8f. DATE OF DISCHARGE OR RELEASE
[ ] ARMY [ ] NAVY [ ] AIR FORCE [ ] MARINE CORPS [ ] COAST GUARD	[ ] REGULAR [ ] YES [ ] NO [ ] RES [ ] YES [ ] NO		8g. CHARACTER OF DISCHARGE OR RELEASE	8h. GRADE AND ARM/SERVICE AT TIME DISCHARGED OR RELEASED (Also separation number regulation)

9a. PRESENT CIVILIAN TRADE OR OCCUPATION (Type of business): Unemployed

9b. LENGTH OF EXPERIENCE: Years | Months

10. EDUCATION

GRADE OR YEAR COMPLETED (Enter through last grade or years satisfactorily completed) (Elementary, high or business schools)	ELEMENTARY AND HIGH SCHOOL												COLLEGE				POST GRADUATE			
	NONE	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	1	2	3	4

11. PLACE OF BIRTH	12a. U.S. CITIZEN	IF NOT A U.S. CITIZEN		
		12b. DATE OF ENTRY INTO U.S. FOR [ ] PERMANENT [ ] TEMPORARY RESIDENCE	12c. ALIEN REGISTRANT RECEIPT CARD NUMBER	12d. FOREIGN COUNTRY OF WHICH CITIZEN
Greenville Calif.	[X] YES [ ] NO			

12e. IF NATURALIZED CITIZEN, GIVE DATE, PLACE, COURT OF JURISDICTION AND NATURALIZATION NUMBER

13a. CONVICTED OR ADJUDICATED OF CRIME OTHER THAN MINOR TRAFFIC VIOLATION (If "Yes", specify when, where, nature of court and sentence)	13b. NOW IN CUSTODY OF LAW	14. CONSCIENTIOUS OBJECTOR
[ ] YES [X] NO	[ ] YES [X] NO. IF ANSWER IS "YES", IS NECESSARY RELEASE OR WAIVER ATTACHED? [ ] YES [ ] NO	[ ] CLASS I-A-O [ ] CLASS I-O

15. PREVIOUSLY EXAMINED AND NOT ACCEPTABLE [ ] YES [X] NO (If "Yes", indicate the following) (Check one)
[ ] NOT ACCEPTABLE ON PREINDUCTION [ ] NOT ACCEPTABLE ON INDUCTION [ ] NOT ACCEPTABLE ON ENLISTMENT

SECTION II - LOCAL BOARD MEDICAL INTERVIEW

16. PHYSICAL DEFECTS (To be completed by Local Board)

a. LIST ALL DEFECTS AND DISEASES CLAIMED BY THE REGISTRANT AND ANY DEFECTS OR DISEASES WHICH THE REGISTRANT MAY HAVE, AND WHICH ARE KNOWN TO THE LOCAL BOARD (If no defects, indicate by "None"): None

b. ARE ANY OF THE DEFECTS OR DISEASES LISTED IN ITEM "a" ABOVE INCLUDED IN LIST OF DEFECTS (Par 1639, 32 Reg.)? [ ] YES [ ] NO

c. REGISTRANT OR AFFIDAVIT REFERRED TO LOCAL BOARD MEDICAL ADVISOR [ ] YES [ ] NO

17. STATEMENT OF LOCAL BOARD MEDICAL ADVISOR (To be Completed if Item 16c is "Yes")

FINDINGS

a. [ ] REGISTRANT DOES NOT HAVE DISQUALIFYING DEFECT(S) CLAIMED.

b. [ ] REGISTRANT HAS THE FOLLOWING DISQUALIFYING DEFECT OR DEFECTS (Enter the principal disqualifying defect first, list all other defects in order of significance, and attach affidavits or statements):

c. REMARKS

DATE	PLACE	SIGNATURE OF LOCAL BOARD MEDICAL ADVISOR (When Item 16c is "Yes")
		SIGNATURE OF MEMBER OR CLERK OF LOCAL BOARD (When Item 16c is "No")

DD FORM 1 NOV 53 47 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE

92

[fol. 126]

71

SECTIONS III, IV, V, VI, VII, VIII, AND IX SHALL BE FILLED OUT AT INDUCTION STATION

SECTION III - MEDICAL DETERMINATION

REMEMBER: Changes in physical profile or physical category on DD 62 will be entered on separate lines under original determination

15. DATE	PHYSICAL PROFILE SERIAL						PHYSICAL CATEGORY			
	P	U	L	H	E	S	A	B	C	E

SECTION IV - ORDER OF ARMED FORCES SERVICE PREFERENCE

16. PLACE ORDER OF PREFERENCE NUMBER IN BOX

☐ ARMY ☐ NAVY ☐ MARINE CORPS ☐ COAST GUARD ☐ AIR FORCE ☐ NONE

SECTION V - MENTAL DETERMINATION

20a. TEST - FORM - SCORE	AFQT MENTAL GROUP	I	II	III	IV	V	☐ ADMINISTRATIVELY ACCEPTED

20b. OTHER TEST(S)	SCORE
	☐ QUALIFYING ☐ DISQUALIFYING

SECTION VI - MORAL DETERMINATION

21. REGISTRANT HAS BEEN PERSONALLY INTERVIEWED AT TIME OF

a. ☐ PREINDUCTION - REVEALED COURT ADJUDICATION OR CONVICTION* ☐ YES ☐ NO WAIVER ☐ NOT REQUIRED ☐ GRANTED ☐ NOT GRANTED ☐ NOT PROCESSED

b. ☐ INDUCTION - REVEALED COURT ADJUDICATION OR CONVICTION* ☐ YES ☐ NO WAIVER ☐ NOT REQUIRED ☐ GRANTED ☐ NOT GRANTED ☐ NOT PROCESSED

*Except minor traffic violations. REMARKS:

SECTION VII - DETERMINATION AT PREINDUCTION EXAMINATION

22. THE QUALIFICATIONS OF THE ABOVE NAMED REGISTRANT HAVE BEEN CONSIDERED IN ACCORDANCE WITH THE CURRENT REGULATIONS GOVERNING THE ACCEPTANCE OF SELECTIVE SERVICE REGISTRANTS AND HE WAS THIS DATE

a. ☐ FOUND ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES

b. ☐ FOUND NOT ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES FOR THE FOLLOWING REASONS

ADMINISTRATIVE: ☐ MORAL ☐ ALIEN ☐ OTHER ADMINISTRATIVE (Specify)

☐ TRAINABILITY LIMITED (T-O)

☐ FAILED AFQT ONLY ☐ FAILED AFQT AND MEDICAL

FAILED MEDICAL ONLY: ☐ PSYCHIATRIC ☐ OTHER MEDICAL

DATE	PLACE

TYPED NAME, GRADE, AND ORGANIZATION OF CO OF INDUCTION STATION	SIGNATURE

SECTION VIII - DETERMINATION AT INDUCTION EXAMINATION

23. TYPE OF EXAMINATION (Check one):

☐ PHYSICAL INSPECTION ☐ COMPLETE MEDICAL EXAMINATION (Due to lapse of time) ☐ COMPLETE MEDICAL AND MENTAL EXAMINATION (Delinquents, previous volunteers, etc.)

a. ☐ FOUND ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES

b. ☐ FOUND NOT ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES FOR THE FOLLOWING REASONS:

ADMINISTRATIVE: ☐ MORAL ☐ ALIEN ☐ OTHER ADMINISTRATIVE (Specify)

☐ TRAINABILITY LIMITED (T-O)

☐ FAILED AFQT ONLY ☐ FAILED AFQT AND MEDICAL

FAILED MEDICAL ONLY: ☐ PSYCHIATRIC ☐ OTHER MEDICAL

DATE	PLACE

TYPED NAME, GRADE AND ORGANIZATION OF CO OF INDUCTION STATION	SIGNATURE

SECTION IX - DISPOSITION OF INDUCTEE BY ARMED FORCES

24. THE QUALIFICATIONS OF THE ABOVE-NAMED INDIVIDUAL HAVE BEEN CONSIDERED IN ACCORDANCE WITH CURRENT REGULATIONS GOVERNING THE ACCEPTANCE OF SELECTIVE SERVICE REGISTRANTS AND HE WAS INDUCTED INTO:

☐ ARMY ☐ NAVY ☐ MARINE CORPS ☐ COAST GUARD ☐ AIR FORCE

e. DATE OF INDUCTION

AND ORDERED TO REPORT TO:

a. ORGANIZATION	c. LOCATION	d. DATE

e. INDUCTION STATION AT WHICH INDUCTED

TYPED OR STAMPED NAME AND GRADE OF INDUCTION OFFICER	SIGNATURE OF INDUCTION OFFICER

SECTION X - FINGERPRINTS OF RIGHT HAND (Fingerprint impressions will be made in this space in the case of every person inducted)

1. THUMB	2. INDEX	3. MIDDLE	4. RING	5. LITTLE

[Fol. 127]

AIR FORCE | ARMY

SECTION V - MENTAL DETERMINATION

30a. TEST - FORM - SCORE	APQT MENTAL GROUP	I	II	III	IV	V	[ ] PSYCHONEUROTICALLY INDICATED
30b. OTHER TESTS:							SCORE [ ] QUALIFIED [ ] DISQUALIFIED

SECTION VI - MORAL DETERMINATION

31. REGISTRANT HAS BEEN PERSONALLY INTERVIEWED AT TIME OF

a. [ ] PRE-INDUCTION - REVEALED COURT ADJUDICATION OR CONVICTION YES* NO GIVEN NOT REQUIRED [ ] ADJUSTED [ ] NOT ADJUSTED [ ] NOT PROCESSED

b. [ ] INDUCTION - REVEALED COURT ADJUDICATION OR CONVICTION YES* NO GIVEN NOT REQUIRED [ ] ADJUSTED [ ] NOT ADJUSTED [ ] NOT PROCESSED

*Explain under item 32 where indicated. REMARKS

SECTION VII - DETERMINATION AT PRE-INDUCTION EXAMINATION

32. THE QUALIFICATIONS OF THE ABOVE NAMED REGISTRANT HAVE BEEN CONSIDERED IN ACCORDANCE WITH THE CURRENT REGULATIONS GOVERNING THE ACCEPTANCE OF SELECTIVE SERVICE REGISTRANTS AND HE WAS THIS DATE

a. [ ] FOUND ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES

b. [ ] FOUND NOT ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES FOR THE FOLLOWING REASONS

ADMINISTRATIVE: [ ] MORAL [ ] ALIEN [ ] OTHER ADMINISTRATIVE (Specify)

[ ] TRAINABILITY LIMITED (T-0)

[ ] FAILED AFQT ONLY [ ] FAILED AFQT AND MEDICAL

FAILED MEDICAL ONLY: [ ] PSYCHIATRIC [ ] OTHER MEDICAL

DATE	PLACE
TYPED NAME, GRADE, AND ORGANIZATION OF CO OF INDUCTION STATION	SIGNATURE

SECTION VIII - DETERMINATION AT INDUCTION EXAMINATION

33. TYPE OF EXAMINATION (Check one):

[ ] PHYSICAL INSPECTION [ ] COMPLETE MEDICAL EXAMINATION (Due to lapse of time) [ ] COMPLETE MEDICAL AND MENTAL EXAMINATION (Delinquents, previous volunteers, etc.)

a. [ ] FOUND ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES

b. [ ] FOUND NOT ACCEPTABLE FOR INDUCTION INTO THE ARMED FORCES FOR THE FOLLOWING REASONS:

ADMINISTRATIVE: [ ] MORAL [ ] ALIEN [ ] OTHER ADMINISTRATIVE (Specify)

[ ] TRAINABILITY LIMITED (T-0)

[ ] FAILED AFQT ONLY [ ] FAILED AFQT AND MEDICAL

FAILED MEDICAL ONLY: [ ] PSYCHIATRIC [ ] OTHER MEDICAL

DATE	PLACE
TYPED NAME, GRADE AND ORGANIZATION OF CO OF INDUCTION STATION	SIGNATURE

SECTION IX - DISPOSITION OF INDUCTEE BY ARMED FORCES

34. THE QUALIFICATIONS OF THE ABOVE-NAMED INDIVIDUAL HAVE BEEN CONSIDERED IN ACCORDANCE WITH CURRENT REGULATIONS GOVERNING THE ACCEPTANCE OF SELECTIVE SERVICE REGISTRANTS AND HE WAS INDUCTED INTO:

[ ] ARMY [ ] NAVY [ ] MARINE CORPS [ ] COAST GUARD [ ] AIR FORCE

a. DATE OF INDUCTION

AND ORDERED TO REPORT TO:

b. ORGANIZATION	c. LOCATION	d. DATE

e. INDUCTION STATION AT WHICH INDUCTED

TYPED OR STAMPED NAME AND GRADE OF INDUCTION OFFICER	SIGNATURE OF INDUCTION OFFICER

SECTION X - FINGERPRINTS OF RIGHT HAND (Fingerprint impressions will be made in this space in the case of every person inducted)

1. THUMB	2. INDEX	3. MIDDLE	4. RING	5. LITTLE

* GPO : 1953 O—[illegible]

93

[fol. 127]

REPORT OF MEDICAL EXAMINATION

INDUCTEE

1. LAST NAME—FIRST NAME—MIDDLE NAME

[redacted], ROBERT BRUCE

4. PRESENT ADDRESS (Number, street or R.F.D., city or town, zone and State)

1730 Grove St., Berkeley, Calif

7. SEX: MALE

8. RACE

9. TOTAL YEARS GOVERNMENT SERVICE: MILITARY / CIVILIAN

12. DATE OF BIRTH: 6 Jul 38

13. PLACE OF BIRTH: Greenville, Calif

16. EXAMINING FACILITY OR EXAMINER, AND ADDRESS: AFES, OAKLAND, CALIFORNIA

16. OTHER INFORMATION: SS#: 4 53 38 188

17. RATING OR SPECIALTY

TIME IN THIS CAPACITY (Total)

LAST SIX MONTHS

CLINICAL EVALUATION

NORMAL	(Check each item in appropriate column; enter "NE" if not evaluated.)	ABNORMAL
	18. HEAD, FACE, NECK AND SCALP	
	19. NOSE	
	20. SINUSES	
	21. MOUTH AND THROAT	
	22. EARS—GENERAL (Ext. & int. canals) (Auditory acuity under items 70 and 71)	
	23. DRUMS (Perforation)	
	24. EYES—GENERAL (Visual acuity and refraction under items 69, 69 and 67)	
	25. OPHTHALMOSCOPIC	
	26. PUPILS (Equality and reaction)	
	27. OCULAR MOTILITY (Associated parallel movements, nystagmus)	
	28. LUNGS AND CHEST (Include breasts)	
	29. HEART (Thrust, size, rhythm, sounds)	
	30. VASCULAR SYSTEM (Varicosities, etc.)	
	31. ABDOMEN AND VISCERA (Include hernia)	
	32. ANUS AND RECTUM (Hemorrhoids, fistulae) (Prostate, if indicated)	
	33. GENITOURINARY SYSTEM	
	34. G-U SYSTEM	
	35. UPPER EXTREMITIES (Strength, range of motion)	
	36. FEET	
	37. LOWER EXTREMITIES (Strength, range of motion)	
	38. SPINE, OTHER MUSCULOSKELETAL	
	39. IDENTIFYING BODY MARKS, SCARS, TATTOOS	
	40. SKIN, LYMPHATICS	
	41. NEUROLOGIC (Equilibrium tests under item 72)	
	42. PSYCHIATRIC (Specify any personality deviation)	
	43. PELVIC (Female only) (Check how done) ☐ VAGINAL ☐ RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

(Continued in item 73)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)

O—Restorable tooth; X—Missing tooth; /—Nonrestorable tooth; XXX—Replaced by dentures; (6 X 4)—Fixed bridge, brackets to include abutments

RIGHT	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	LEFT
	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	

REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES

ACCEPTABLE

LABORATORY FINDINGS

[fol. 128]

MEASUREMENTS AND OTHER FINDINGS

51. HEIGHT | 52. WEIGHT | 53. COLOR HAIR | 54. COLOR EYES | 55. BUILD ☐ SLENDER ☐ MEDIUM ☐ HEAVY ☐ OBESE | 56. TEMPERATURE

57. BLOOD PRESSURE (.0 mm of heart level)

A SITTING	SYS	DIAS	B RECUMBENT	SYS	DIAS	C STANDING (3 min.)	SYS	DIAS

58. PULSE (.0 mm of heart level)

A SITTING	B AFTER EXERCISE	C 2 MIN AFTER	D RECUMBENT	E AFTER STANDING 3 MIN.

59. DISTANT VISION

RIGHT 20/ CORR TO 20/

LEFT 20/ CORR TO 20/

60. REFRACTION

BY S OX

BY S OX

61. NEAR VISION

CORR TO BY

CORR TO BY

62. HETEROPHORIA (*Specify distance*)

ESO EXO R H L H PRISM DIV. PRISM CONV. PC PD

CT

COVER TEST 20':

63. ACCOMMODATION

RIGHT X LEFT X

64. COLOR VISION (*Test used and result*)

AOC:

65. DEPTH PERCEPTION (*Test used and score*)

66. FIELD OF VISION

67. NIGHT VISION (*Test used and score*)

68. RED LENS TEST

69. INTRAOCULAR TENSION

UNCORRECTED

CORRECTED

NORMAL

70. HEARING

RIGHT WV /15 SV /15

LEFT WV /15 SV /15

71. AUDIOMETER

	250 cps	500 cps	1000 cps	2000 cps	3000 cps	4000 cps	6000 cps	8000 cps
RIGHT								
LEFT								

72. PSYCHOLOGICAL AND PSYCHOMOTOR (*Tests used and score*)

SEE ITEM 73

73. NOTES (*Continued*) AND SIGNIFICANT OR INTERVAL HISTORY

AFQT:

(*Use additional sheets if necessary*)

74 SUMMARY OF DEFECTS AND DIAGNOSES (*List diagnosis with item numbers*)

75. RECOMMENDATIONS FURTHER SPECIALIST EXAMINATIONS INDICATED (*Specify*)

76. A PHYSICAL PROFILE

P	U	L	H	E	S

B PHYSICAL CATEGORY

A	B	C	E

77. EXAMINEE (*Check*)

A ☐ IS QUALIFIED FOR

B ☐ IS NOT QUALIFIED FOR MILITARY SERVICE

78. IF NOT QUALIFIED LIST DISQUALIFYING DEFECTS BY ITEM NUMBER

79 TYPED OR PRINTED NAME OF PHYSICIAN

SIGNATURE

[fol. 129]

LEFT 20/ CORR TO 20/ | BY S OX | CORR. TO BY

62. HETEROPHORIA (*Specify distance*)

ES° EX° R. H. L. H. PRISM DIV. PRISM CONV. CT PC PD

COVER TEST 20':

63. ACCOMMODATION

RIGHT X LEFT X

64. COLOR VISION (*Test used and result*)

AOC:

65. DEPTH PERCEPTION (*Test used and score*)

UNCORRECTED

CORRECTED

66. FIELD OF VISION

67. RIGHT VISION (*Test used and score*)

68. RED LENS TEST

69. INTRAOCULAR TENSION

NORMAL

70. HEARING

RIGHT WV /15 SV /15

LEFT WV /15 SV /15

71. AUDIOMETER

	512	1024	2048	4096	8192
RIGHT					
LEFT					

72. PSYCHOLOGICAL AND PSYCHOMOTOR (*Tests used and score*)

SEE ITEM 73

73. NOTES (*Continued*) AND SIGNIFICANT OR INTERVAL HISTORY

APQT:

(*Use additional sheets if necessary*)

74 SUMMARY OF DEFECTS AND DIAGNOSES (*List diagnoses with item numbers*)

75. RECOMMENDATIONS FURTHER SPECIALIST EXAMINATIONS INDICATED (*Specify*)

77. EXAMINEE (*Check*)

A ☐ IS QUALIFIED FOR

B ☐ IS NOT QUALIFIED FOR MILITARY SERVICE

78. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER

76. A PHYSICAL PROFILE

P	U	L	H	E	S

B PHYSICAL CATEGORY

A	B	C	E

79 TYPED OR PRINTED NAME OF PHYSICIAN — SIGNATURE

80. TYPED OR PRINTED NAME OF PHYSICIAN — SIGNATURE

81. TYPED OR PRINTED NAME OF DENTIST OR PHYSICIAN (*Indicate which*) — SIGNATURE

82. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY — SIGNATURE

NUMBER OF ATTACHED SHEETS

95

U.S. GOVERNMENT PRINTING OFFICE 1986 O-646814

[fol. 129]

74

SELECTIVE SERVICE SYSTEM

Budget Bureau. App. not required.

DELINQUENT REGISTRANT REPORT

[illegible] 63 Blvd. [illegible]

(Local Board Stamp)

January 22, 1962
(Date)

TO: Hon. Cecil [illegible] United States Attorney

Northern Dist. of Calif. 422 Post Office Bldg. 7th & Mission St. San Francisco, Calif.
(Address)

1. IDENTIFICATION OF DELINQUENT:

Full name of delinquent:

[illegible], (Last) Forest (First) Britt (Middle) | None (Alias, if any)

Last known address: 1730 Grove St. (Number and street or R. F. D. route) Berkeley, (City, town, or village) (Zone) (County) Calif. (State)

Last known telephone No.:

Selective Service No.:	Social Security No.:	Selective Service classification:
[illegible] 53 38 188	546 46 [illegible]	1-A

Color of eyes:	Color of hair:	Complexion:	Height:	Weight:	Race:
Brown	Brown	Fair	5'11"	190	W

Other obvious physical characteristics:

None

Date of birth: July (Month) 6 (Day) 1938 (Year)

Place of birth: Greenville, Calif. U.S.A. (City, town, county) (State or country)

Prior military service:

None
(Branch of Armed Forces) (Service or serial number) (Date of entry)

(Name of last organization) (Date of separation)

This delinquent has a court record as follows:

Offense	Date of Conviction (Month, day, year)	Court (Name and location)	Sentence
None			

[illegible] Fol. 135]

2. OFFENSES:

This delinquent failed to report for induction into the Armed Forces pursuant to (check applicable box):

☐ Order to Report for Induction (SSS Form No. 252).

☐ Order for Transferred Man to Report for Induction (SSS Form No. 253).

The order indicated was mailed on Oct. 13, 1961 (Date of mailing) to this delinquent at

1730 Grove St. Berkeley, Calif. to report on Nov. 22, 1961

(Local Board Stamp)

TO: Hon. Cecil F. Poole, United States Attorney

Northern Dist. of Calif. 422 Post Office Bldg. 7th & Mission St. San Francisco, Calif.
(Address)

1. IDENTIFICATION OF DELINQUENT:

Full name of delinquent: [redacted] (Last) Forest (First) Britt (Middle)

Alias, if any: None

Last known address: 1730 Grove St. (Number and street or R. F. D. route) Berkeley, (City, town, or village) (Zone) (County) Calif. (State)

Last known telephone No.:

Selective Service No.:	Social Security No.:	Selective Service classification:
4 53 38 188	546 46 9944	1-A

Color of eyes:	Color of hair:	Complexion:	Height:	Weight:	Race:
Brown	Brown	Fair	5'11"	190	W

Other obvious physical characteristics: None

Date of birth: July (Month) 6 (Day) 1938 (Year)

Place of birth: Greenville, Calif. (City, town, county) U.S.A. (State or country)

Prior military service: None (Branch of Armed Forces) (Service or serial number) (Date of entry)

(Name of last organization) (Date of separation)

This delinquent has a court record as follows:

Offense	Date of Conviction (Month, day, year)	Court (Name and location)	Sentence
None			

2. OFFENSES:

This delinquent failed to report for induction into the Armed Forces pursuant to (check applicable box):

☐ Order to Report for Induction (SSS Form No. 252).

☐ Order for Transferred Man to Report for Induction (SSS Form No. 253).

The order indicated was mailed on Oct. 13, 1961 (Date of mailing) to this delinquent at

1730 Grove St. Berkeley, Calif. (Address) to report on Nov. 22, 1961 (Date)

In addition to failing to report for induction into the Armed Forces this delinquent has also failed to perform the following duties at the times indicated:

DUTIES	DATES
Failed to submit to induction	Nov. 22, 1961

SSS Form No. 301 (Revised 6-29-61) (OVER) 16—64888-1

101

[Fol. 135]

75

3. EFFORTS MADE TO LOCATE DELINQUENT:

The delinquent ..... been located on ..... at .....
(Has, has not) (Date) (Address)

The person who will always know the delinquent's address is .....
(Name)

..... This person ..... been contacted by
(Address) (Has, has not)

..... on ..... with the following result .....
(Letter, telephone, in person) (Date)

.....

The delinquent's last known place of employment or business is .....
(Name)

....., ... His employer ..... been contacted by
(Address) (Telephone number) (Has, has not)

..... on ..... with the following result .....
(Letter, telephone, in person) (Date)

.....

4. Mail directed to the delinquent ..... returned by the post office.
(Is, is not)

5. REMARKS: (Include additional efforts to locate delinquent or names of individuals who may know whereabouts of the delinquent.)

Registrant's file has been reviewed by the Director of Selective Se vice under the provisions of paragraph 9, LSM No. 14, and The Director has determined that prosecutive action should be taken in the case.

[Fol. 136]

6. FUTURE INFORMATION:

You will be advised promptly by letter of any change in this delinquent's status and of any additional facts which may come to the attention of this board concerning his whereabouts or which may aid you in apprehending and prosecuting him.

The delinquent's last known place of employment or business is _____ (Name)

_____ (Address), _____ (Telephone number) His employer _____ (Has, has not) been contacted by

_____ (Letter, telephone, in person) on _____ (Date) with the following result _____

4. Mail directed to the delinquent _____ (Is, is not) returned by the post office.

5. REMARKS: (Include additional efforts to locate delinquent or names of individuals who may know whereabouts of the delinquent.)

Registrant's file has been reviewed by the Director of Selective Service under the provisions of paragraph 9, LBM No. 14, and The Director has determined that prosecutive action should be taken in the case.

[fol. 136]

6. FUTURE INFORMATION:

You will be advised promptly by letter of any change in this delinquent's status and of any additional facts which may come to the attention of this board concerning his whereabouts or which may aid you in apprehending and prosecuting him.

_____ (Member or clerk of local board)

This form will be used in making report to the United States Attorney of delinquents, who fail to report for induction. Other delinquencies, if reported to the United States Attorney, will be reported by letter.

This form will be made out in triplicate. The original and first copy of the form shall be sent to the United States Attorney for the judicial district in which the local board is located. One copy of the form shall be filed in the Cover Sheet (SSS Form No. 101) of the delinquent.

16—64333-1 U. S. GOVERNMENT PRINTING OFFICE

76

162

[fol. 142]

GOVERNMENT'S EXHIBIT No. 2

[Stamp—Hayward Local Board Group "D"—Alameda County—JUN 26, 1962—24800 Mission Blvd., Hayward, California]

Forest Britt Peter
442 65th Street
Oakland, California

Dear Sirs,

On Aug. 30th 1961 I refused to participate in the pre-induction physical of the Armed Forces. I felt this act was consistant with my beliefs as a Conscientious Objector to war and opponent of the military institution.

Since that time I have consulted counsel and found that one must exhaust a number of legal remedies before being able to state their position in court, and that the pre-induction physical is one of these procedures.

At this time, on the advice of counsel, I would like to take the pre-induction physical, so that I might better present my objection to war and opposition to the military institution at future hearings of my case.

This in no way alters my basic position. I remain a Conscientious Objector to war and am a proponent of the alternatives to violence that non-violent actions present, in both private and public affairs and relations.

Once again,

/s/ FOREST BRITT PETER
Forest Britt Peter

[Handwritten notation—Al Ames—8/6/62]

[fol. 146]

(Emblem)

CALIFORNIA HEADQUARTERS
SELECTIVE SERVICE SYSTEM
OLD POST OFFICE BLDG., 7TH AND K STREETS
SACRAMENTO 14, CALIFORNIA

IN REPLYING ADDRESS
THE STATE DIRECTOR AND REFER TO
SUBJECT BELOW

19-12

July 3, 1962

Mr. Forest Britt Peter
442—68th Street
Oakland, California

Dear Sir:

This will acknowledge your undated letter which was received at this headquarters on June 27, 1962.

Your case has already been referred to the United States Attorney, therefore, neither your local board nor this headquarters may authorize a new preinduction physical examination in lieu of the one scheduled for August 30, 1961, and for which you failed to report.

This headquarters contemplates no further action in your case since it is in the hands of the United States Attorney.

FOR THE STATE DIRECTOR

THOMAS L. JENSEN
Major, USMC
Manpower Division

cc: Lt. Col. Frank G. Lyman
Local Board No. 53

[Stamp—Hayward Local Board Group "D"—Alameda County—JUL 5, 1962—24800 Mission Blvd., Hayward, California]

[fol. 147]

Forest Britt Peter
442 65th Street
Oakland, California

Dear Sirs,

On Aug. 30th, 1961 I refused to participate in the pre-induction physical of the Armed Forces. I felt this act was consistant with my beliefs as a Conscientious Objector to war and opponent of the military institution.

Since that time I have consulted counsel and found that one must exhaust a number of legal remedies before being able to state their position in court, and that the pre-induction physical is one of these procedures.

At this time, on the advice of counsel, I would like to take the pre-induction physical, so that I might better present my objection to war and opposition to the military institution at future hearings of my case.

This in no way alters my basic position. I remain a Conscientious Objector to war and am a proponent of the alternatives to violence that non-violent actions present, in both private and public affairs and relations.

Once again,

/s/ Forest Britt Peter

Forest Britt Peter

[Stamp—Hayward Local Board Group "D"—Alameda County—JUL 5, 1962—24800 Mission Blvd., Hayward, California]

[fol. 149]

Local Board No. 53
24800 Mission Blvd.
Hayward, California

August 8, 1962

Forest Britt Peter
442—65th St., Back Cottage
Oakland, California

SS No. 4 53 38 188

Dear Sir:

This is in reply to your recent undated letter in which you asked this local board to order you again for physical examination.

Your file discloses that on August 30, 1961 you failed to appear for a physical examination and that on November 22, 1961 you appeared at the induction station and refused to enter into the induction processing which included the taking of a physical examination.

Evidence has not been presented to indicate that you are willing to accept induction into the Armed Forces and a physical examination is a pre-requisite to induction; therefore, it is the opinion of this local board that no useful purpose would be served the Selective Service System by granting your request.

By Direction of Local Board No. 53

/s/ Dorothy C. Thussin
Coordinator

[fol. 151]

DEFENDANT'S EXHIBIT "A"

Forest Britt Peter
442—65th Street
Oakland, California

July 6, 1962

Lieutenant General Lewis B. Hershey
Director, Selective Service System
451 Indiana Avenue N. W.
Washington 25, D. C.

Dear General Hershey:

Re: Pre-Induction Physical

On August 30, 1961, I refused to participate in the pre-induction physical of the Armed Forces. I felt this act was consistant with my beliefs as a Conscientious Objector to war and opponent of the military institution.

Since that time I have consulted counsel and found that one must exhaust a number of legal remedies before being able to state their position in court, and that the pre-induction physical is one of these procedures.

At this time, on the advice of counsel, I would like to take the pre-induction physical, so that I might better present my objection to war and opposition to the military institution at future hearings of my case.

I have presented this request to parties at the Local Physical and Induction Center, to my local Draft Board and to the State Director of Selective Service. None has to date made a ruling on the request. Could you possibly give it some consideration.

The detailed statement that follows contains evidence of my continued stand as a Conscientious Objector to war.

Respectfully submitted,

Forest Britt Peter

Selective Service No.
4-53-38-188

[fol. 152]

Forest Britt Peter
442—65th Street
Oakland, California

July 6, 1962

Lieutenant General Lewis B. Hershey
Director, Selective Service System
451 Indiana Avenue N. W.
Washington 25, D. C.

Dear General Hershey:

I am writing on the advice of counsel and through the recommendation of the National Board for Religious Objectors, in the hope you might give my case as a Conscientious Objector to war, some consideration. I have been refused classification as a Conscientious Objector at the Draft Board and the Appeal Board level. I would like a decision on your part regarding a Presidential Appeal and will present evidence here, in a further attempt to clarify my position as an objector to war. It is my hope you will consider the contents of this letter and grant such an appeal.

I feel there has been a lack of communication between myself and the officials of the government in this case and that this has been the result of my religious views not being orthodox. I would like to make another attempt here to clarify the motivating factors behind my beliefs as an objector to war, so you might better understand my position.

I have never answered "yes" or "no" to the question, "Do you believe in a Supreme Being?", for several reasons. For one, I was not sure of the Government's definition of a Supreme Being and, as far as I know, the government has never defined the words, 'Supreme Being' in print or in any law. This definition it seems to me would trap the government into the tangle of proving God's existence and God's specific character. Something government officials have neither the right or inclination to do. Yet, they ask of the applicant for Objector classification to accept this

undefined creation: a Supreme Being. They also ask him to show proof of the relationship to this Being and how it affects the applicant's actions in opposition to war. I cannot answer these questions with the simple "yes" or "no" answers the form calls for. The nature of my belief is more complex and I must have more room to expand my thoughts and to express, or translate, my beliefs through the medium of language. I find this task additionally difficult because I place the stress of my belief on the products, the elements in creation, rather than on a reverence toward the possible Creator of these elements and mysteries of the universe.

This reverence for the elements in the universe before that of the possible creator might be unorthodox, but it is not foreign to religious thought. Witness the writings of Buddha (those attributed to him and early followers), and to Lao Tzu as well as Christian mystics like Boehme and Blake.

[fol. 153] I feel that one is not amiss in terming my conviction "religious" in that it is based on vision and a dedication to that vision, and I feel that this vision and my commitment to it fits into a definite tradition if not into any specific historical group.

I would like here to further show the nature of this vision, to speak of the motivation of my convictions and give evidence of my commitment to these convictions.

I'm motivated by what Albert Schweitzer calls a "reverence for Life". I think of myself as a receptive organ through which the tragedy and beauty of the world are preceived. For instance, if I hear of a man dying in the gas chamber, I feel no malice for his crime, it is usually understandable, but I do feel a sickening loss for his death. I feel that each individual has the potential of realizing every moment of his life until death and that I as another human being cannot deny him the destiny his life might follow, no matter how wrong-headed it might seem. I would attempt other sanctions toward him. Sanctions that would not harm his physical presence on earth.

Or as another example: I see a new child in the world and am struck with wonder. Here is another being, very

strange, and it is not for me to destroy his growth. I must try not to harm his development. His education should be administered with gentleness.

The presense of other living being in the universe sounds a call, presents a vision, a fact, a mysterious reality that I cannot deny and to which I feel the impulse to relate.

I view physical violence on the other hand as a denial of life. A denial that in most cases shows a misunderstanding of the other or of the opponent and that the result of physical violence, though it often seemed necessary in passion, leaves one after the act, only with a sense of loss and the fact of wasted energy.

I believe that the use of physical force in war by nation states is an even greater waste than violence motivated by immediate passion. Even more so today where the techniques of war might involve the possible destruction of our entire civilized world. In my mind no cause justifies the murder of other human beings. This goes for both the innocent who would be harmed by such an act and for those we would call the enemy.

I was moved to this persuation by the politics of those, (Bayard Rustin and other pacifists whose words and acts early interested me), who stressed the morality of means in attempts to secure just ends. The tragedy of history seems to uphold this attitude and the necessity of bringing into play non-violent alternatives at points of crises in the future.

My conviction is not based on intellectual conclusions alone. But is primarily based on the promptings of my heart and [fol. 154] the sense of relationship with all living elements in nature. I continually put these various elements to the test in contemplation. You might say this is the subject of my soul. My convictions are the tools for acts, the distilled product of reflection.

I feel that my conviction as an objector to war has grown rather than lessened through the years and that I am more deeply committed to a non-violent attitude toward other beings now than ever before.

The actual application of this conviction has resulted in many acts on my part, such as the very important one of refusual to enter the armed forces. I have also been involved in other pacifist activities in recent years in an attempt to sway the drift toward war that the major nations of the world are caught up in. I have worked for both Acts for Peace in Berkeley and the new Committee for Non-Violent Action in San Francisco. I have participated in many demonstrations, vigils and protests and most recently took part in the protest of Nucular Testing at the Federal Building in San Francisco. At this protest, 37 of us, following promptings of conscience committed civil disobedience in an effort to confront the government with our disapproval of their policies and our alternative solutions. Everyone in the group firmly believed in non-violent action and no violence did occur. We treated the officials of the government who were our opponents with the love and gentleness we had for them as human beings. Trying by non-violent sanctions to alter their attitudes. They followed our example and practiced non-violence too. Neither party was left at the end of the protest with the waste and loss involved in physical force or violence.

I spoke at the beginning of a tradition that I felt my religious convictions belonged to. I would like to clarify that here. I feel that my convictions are not isolated or in a vacuum. I have the words and acts of men who have lived throughout history to inspire and back me up. I have the example and inspiration of Guatama whose four-fold truth is still a valid prescription for human happiness and if followed would bring an end to the threat of actuality of war. There is the Tao Te Cheng of Lao Tzu which so beautifully expresses a reverence and relationship to all the manifestations of the natural world. A work that was presented as an alternative in thought to political oppression of his time.

There is the example of non-violent action in some of the parables of Jesus and in the life of St. Francis.

There is the inspiration of the Bal Shem Tov founder of the Hassidic movement in Eastern Europe, who said the ex-

pression of love toward God and his images on earth, were open to all, even the most ignorant, that they might express that love in the manner by which they were moved. Even if they knew not a single letter or word of Torah.

There is in our own day the work of Ghandi who brought religious conviction into non-violent political activity.

[fol. 155] There is the love of life and reverence toward living things expressed by many poets throughout the ages. They seem to be brothers at the urn of some common goddess though she has never been finally named or particularized.

I feel that I am not being presumptious in using these revered individuals to give my convictions standing. For each man has the potential and choice of doing good and to my mind there is no confusion on the question of serving in the armed forces or opposing the preparation for war. I have no feelings of rightousness, but I do think I am obviously on the side of the 'angels' in this case. The religiousness in this man's body cries out for non-violent relationship, lovingness rather than unnatural death, energy and motives.

It is for the above reasons that I have refused, and do still refuse, to take part in any activity which violates these beliefs. I request that you give further consideration to my case and that my status as a conscientious objector to war be reviewed by you. I request that a Presidential Appeal be granted at this time in accordance with the laws and regulations which are applicable.

It is my further request that I be given a pre-induction physical examination. I have previously refused such an examination when it was proffered me, because I felt that to take such a physical would be a wholly useless act causing unnecessary expense and trouble for the government. I knew at the time that, regardless of the results of the physical, I could not serve in the Armed Forces because of the depths of my beliefs. However, I sincerely desire to follow all the laws and regulations which I possibly can. I have been informed recently, by legal counsel, that my

action in refusing to take the physical was premature and that, as a result, the question of the sincerity of my beliefs might never be able to be raised in court; should my case eventually result in court action. I will, if necessary, suffer the legal penalties of a jail sentence rather than violate my basic beliefs. However, I feel it would be very unfortunate if such a jail sentence were imposed as a result of my failure to follow a regulation rather than on my failure to prove the sincerity of my beliefs. I have no qualms at all about submitting my sincerity to the judicial process, should that become necessary. I therefore request that I now be given a physical examination so that if my other request for a review of my case and a re-determination of my status, is not granted, the true issue in my case may be presented to the courts for their determination.

It is my hope that you give this letter and what I have said consideration and that you reach a favorable decision regarding my pre-induction physical and the merits of a Presidential Appeal, but whatever your decision, I remain a conscientious objector to war and a porponent of non-[fol. 156] violence in both private and public affaris, prepared to accept the consequence of my actions.

Respectfully submitted,

Forest Britt Peter

Forest Britt Peter
442—65th Street
Oakland, California

Selective Service No.
4-53-38-188

July 6, 1962

[fol. 157]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 18,546

FOREST BRITT PETER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

OPINION—October 30, 1963

Before: Madden, Judge of the Court of Claims,* and Hamlin and Browning, Circuit Judges.

HAMLIN, Circuit Judge:

This is an appeal from a conviction of violation of section 12(a) of the Universal Military Training and Service Act, 62 Stat. 622 (1948), 50 U.S.C. App. § 462(a) (1958). Appellant, Forest Britt Peter, having waived a jury trial, was found guilty of failure to submit to induction into the armed forces by the United States District Court for the Northern District of California, and was committed to the custody of the Attorney General for six months. Jurisdiction of this court is based on 28 U.S.C. § 1291 (1958).

On July 10, 1956, appellant registered for the Selective Service System with Local Board No. 53 in Hayward, California. On May 27, 1957, he completed and returned the standard classification questionnaire. He did not sign section VII of that questionnaire, relating to conscientious objector status, but submitted with the questionnaire a quotation from a poem which expressed opposition to war

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* Sitting by designation.

and a statement of his own concurring with the quotation.[1] [fol. 158] On March 10, 1958, the local board received from him a completed SSS Form 150 relating to conscientious objector status. In answer to question 1 in series II, "Do you believe in a Supreme Being?," he answered, "It depends on the definition. See 2 below." Question 2 of the series inquires as to the nature and quality of the belief, question 3 as to its source, and question 5 as to the circumstances, if any, in which force could be used; appellant referred to a separate sheet on which these questions were answered.[2] He stated he was not a member of a religious sect or organization.

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[1] . . . . . so in plain English

I am opposed to all war.
I don't believe human beings should kill each other.
I am opposed to all violence . . . for whatever reason.
i believe that wars will only end when men refuse to murder one another—for whatever reason.
I believe these things as a man and as a revolutionist. For I believe wars will only end when the present murderous forms of society are allowed to die—and all men are at last permitted to live together as brothers.

—from An Astonished Eye Looks out of the Air
—by Kenneth Patchen

I concur with the statements of Mr. Patchen that are listed above.

FOREST BRITT PETER
May 22, 1957

Portland
Oregon

[2] Series II.—Religious Training and Beliefs

2. Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.

I consider this belief to be superior to my obligation to the state.

In so far as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which

[fol. 159] On July 10, 1959, the local board by a 2-to-0 vote classified appellant I-A. On August 3, 1959, appellant appeared at a hearing before the local board where he substantially reiterated the views previously stated. The local board determined by a 2-to-0 vote not to open the case, and a notice of classification was mailed to appellant on August 4. On August 7, appellant wrote a letter to the board which reads as follows:

"Dear Sirs,

"Thank you for your time the other night at the hearing. I'm sorry you were unable to classify me as a Conscientious Objector.

"The decision however, was not a surprise considering my lack of 'proof' and your lack of moral courage.

"I just hope the war you support won't kill us all in the next few years.

"To the future,

"Forest Britt Peter."

---

helps man in the ordering of his life in harmony with its demands . . . (it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

3. I would say that the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic american culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups.

6. The use of violence (physical force) comprises the ends one seeks in action. I consider war to be the greatest example of this. The use of non-violence in the freeing of India and the Montgomery bus strike is an example of the kind of force I do believe in.

FOREST BRITT PETER
3/10/58

The clerk of the local board interpreted this letter as a request for appeal and forwarded the file to the appeal board on September 9. On October 8, the Appeal Board for the Northern District of California "tentatively determined that the registrant should not be classified in Class I-O or in a lower class," and forwarded the file to the Justice Department for investigation and hearing under section 6(j) of the Universal Military Training and Service Act, 62 Stat. 609 (1948), as amended, 50 U.S.C. App. § 456 (j) (1958). On July 29, 1960, the Conscientious Objector [fol. 160] Section of the Justice Department recommended to the appeal board that appellant's claim not be sustained, and a copy was mailed to appellant together with a letter advising him that he had thirty days within which to reply to the recommendation.[3] Appellant's reply was a long letter alleging inaccuracies and irrelevancies in the hearing officer's report together with a lengthy dissertation on his beliefs, their nature, quality, and source. On November 18, 1960, the appeal board by a 5-to-0 vote continued the classification of I-A.

On July 20, 1961, appellant was ordered to report for a pre-induction physical examination scheduled for August 30. Appellant replied with a letter dated August 15 which reads as follows:

"Dear Sirs,

"I will not appear for my Armed Forces Physical Examination August 30th, In accordance with my previously stated views and beliefs as a conscientious objector."

---

[3] "The Hearing Officer reported that he told the registrant that belief in a Supreme Being was required and that at no time did the registrant suggest that he had a belief in a Supreme Being; that in answering the Hearing Officer's question, 'Are you prayerful?' the registrant had stated, 'No, I don't pray.'"

* * *

"The Hearing Officer concluded that the registrant evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act and the Hearing Officer recommended that the claim of the registrant, based upon grounds of conscientious objection, be not sustained."

Appellant also forwarded a letter dated August 15, 1961.[4] Appellant was then ordered to report on November 22 for induction as a delinquent. He replied with a letter to the local board dated October 16 as follows:

> "I recently received from you a notice of delinquency for my failure to report for an Armed Forces Physical Examination on August 30, 1961. I do not consider myself delinquent. I remain as before, a conscientious objector to war and to all military institutions. I am a proponent of non violent action and reaction with [fol. 161] other human beings, and I could not and will not participate in a physical examination whose purpose is to define my fitness for services in the *Armed* Forces.
>
> "Once again,
>
> "Forest Britt Peter."

On advice of counsel, however, appellant reported to the Armed Forces Recruiting Station in Oakland, California, on the appointed day, and there refused to be processed for induction. He was not given a physical examination at that time. Appellant on later dates submitted letters to the local board, the California State Headquarters, and the Director of the Selective Service System, General Hershey, requesting a physical examination, with the avowed purpose of avoiding the effect of the doctrine of exhaustion of administrative remedies. These requests were denied.

On September 26, 1962, appellant was indicted for refusing to submit to induction and was tried and found guilty by the district court without opinion on November 16, 1962.

The issues in this case are: (1) Whether appellant qualifies as a conscientious objector; and (2) whether appellant was precluded from raising the defense because he failed to exhaust his administrative remedies.

---

[4] The letter was almost an exact copy of the letter set out in note 1, *supra*.

In *Estep* v. *United States*, 327 U.S. 114, 122-23 (1946), the Supreme Court held that "the decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant." Appellant contends that there was no basis in fact for the classification given him on the grounds that there is no evidence in the record that anyone at any time questioned the sincerity of his beliefs. The government contends that the local board and the Justice Department's hearing officer had the opportunity to observe the demeanor and attitude of the appellant in his appearances before them and that their refusals to classify him as a conscientious objector show some doubt as to his sincerity. There is some merit in the government's contention. However, even assuming that appellant was absolutely sincere, the record demonstrates that there was a basis in fact for the board's [fol. 162] determination that he did not meet the statutory requirements for a conscientious objector.[5]

Appellant concedes that exemption from service as a conscientious objector is not a matter of constitutional right but of legislative grace. To qualify for such a classification, a registrant must meet the standards set forth by Congress in section 6(j) of the Universal Military Training and Service Act, 62 Stat. 609 (1948), as amended, 50 U.S.C. App. § 456(j) (1958):

> "Nothing contained in this title . . . shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, *by reason of religious training and belief*, is conscientiously opposed to participation in war in any form. *Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those*

[5] Appellant's contention that this case is "on all fours" with Parr v. United States, 272 F.2d 416 (9th Cir. 1959), is in error. The facts in the *Parr* case are entirely different.

arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." (Emphasis added.)

Appellant contends that he meets the definition. His argument is that his beliefs have a religious foundation. In support of this, he stated at his trial:

> "A. I think my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of them, the essence of being alive, and my respecting and loving this livingness in other objects and human beings."
>
> "Q. Well, now, in relation to the question of a Supreme Being—"
>
> "A. I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use."

[fol. 163] In *Berman* v. *United States*, 156 F.2d 377, 380 (9th Cir.), *cert. denied*, 329 U.S. 795 (1946), this court defined the standard set forth in the predecessor to this act as follows: "It is our opinion that the expression 'by reason of religious training and belief' is plain language, and was written into the statute for the specific purpose of distinguishing between a conscientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon an individual's belief in *his responsibility to an authority higher and beyond any worldly one.*" (Emphasis added.) The court also quoted from *United States* v. *Macintosh*, 283 U.S. 605, 633-34 (1931) (Hughes, C.J., dissenting), that "the essence of religion is belief in a *relation to God involving duties superior* to those arising from any human relation." (Emphasis added.) It is true that when the *Berman* case was decided, there was no sentence in the statute defining "religious training and belief." However, the present statute does contain such a definition.

and it is by no means repugnant to the *Berman* definition. In fact, it adopts almost verbatim the wording from Mr. Chief Justice Hughes's dissent in *Macintosh* which the *Berman* court quoted with approval, changing only the word "God" to "a Supreme Being." In *George* v. *United States,* 196 F.2d 445, 451 (9th Cir.), *cert. denied,* 344 U.S. 843 (1952), this court in reaffirming the definition previously used stated that "it is evident that the definition which the Congress introduced into the 1948 Amendment comports with the spirit in which 'Religion' is understood generally, and the manner in which it has been defined by the courts. It is couched in terms of the relationship of the individual to a Supreme Being, and comports with the standard or accepted understanding of the meaning of 'Religion' in American society." Appellant has made no good argument as to why the statutory definition should be overruled, and, indeed, it is far beyond the power of this court to change the definition placed in the act by Congress.

It is significant that nowhere in the record of the proceedings before the administrative bodies did appellant manifest clearly and unequivocally a belief in a Supreme Being to Whom he owed obedience. When asked directly, "Do you believe in a Supreme Being?," he answered, "It depends on the definition." Later he referred to the act of killing as "a violation of moral law." Determination of [fol. 164] his meaning and of his demeanor and attitude were functions of the administrative bodies, and it cannot be said that they were unreasonable in their determination. Such statements were quite consistent with "a merely personal moral code," which is expressly excluded by Congress as a basis for classification as a conscientious objector. As was stated in the *Berman* case, 156 F.2d at 381, "There are those who have a philosophy of life, and who live up to it. There is evidence that this is so in regard to appellant. However, no matter how pure and admirable his standard may be, and no matter how devotedly he adheres to it, his philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute." It was not until his trial for violation of the act that appellant

reluctantly and grudgingly stated that his beliefs might be construed as a belief in a Supreme Being.

We hold there was ample basis in fact for the determination by the selective service board that appellant's claim for exemption did not come within the language of the of the statute.[6]

Judgment affirmed.

[File endorsement omitted]

[fol. 165]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 18,546

FOREST BRITT PETER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

JUDGMENT—Filed and Entered October 30, 1963

Appeal from the United States District Court for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

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[6] By reason of our holding against appellant on this issue it is not necessary for us to consider the issue of whether or not he failed to exhaust his administrative remedies.

[fol. 166] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 18546

FOREST BRITT PETER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

ORDER DENYING PETITION FOR REHEARING
—December 10, 1963

Before: Madden, Judge of the Court of Claims,* and Hamlin and Browning, Circuit Judges.

The petition for rehearing in the above case is denied.

J. Warren Madden, Judge, United States Court of Claims.

O. D. Hamlin, James R. Browning, Circuit Judges.

[fol. 167] Clerk's Certificate to foregoing transcript (omitted in printing).

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* Sitting by designation.

[fol. 168]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1963

FOREST BRITT PETER, Petitioner,

vs.

UNITED STATES.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—January 6, 1964

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 24, 1964.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 6th day of January, 1964.

[fol. 169]

SUPREME COURT OF THE UNITED STATES

No. 797, October Term, 1963

FOREST BRITT PETER, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—May 4, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 50

UNITED STATES, PETITIONER,

VS.

DANIEL ANDREW SEEGER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in the United States Court of Appeals for the Second Circuit		
Appellant's appendix consisting of portions of the record from the United States District Court for the Southern District of New York	a	1
Judgment appealed from	4	2
Indictment	6	3
Government's Exhibit 30(a)—Recommendation of Department of Justice—Letter from U.S. Department of Justice to Chairman, Appeal Board, Selective Service, dated October 22, 1959	8	4
Government's Exhibit 30(b)—Resume of the F.B.I. Inquiry	16	10
Opinion, Levet, J.	24	14
Opinion, Kaufman, J.	44	25
Judgment	61	40
Clerk's certificate (omitted in printing)	76	
Additional record from the United States District Court for the Southern District of New York	77	41
Transcript of hearing, March 26, 1963	77	41
Appearances	77	41
Motion to dismiss indictment and discussion thereon	78	41
Reporter's certificate (omitted in printing)	103	

Additional record from the United States District Court for the Southern District of New York—Continued

GOVERNMENT'S EXHIBITS:	Original	Print
3—Classification Questionnaire (SSS Form No. 100) and Minutes of Actions by Local Board and Appeal Board (excerpts)	104	55
6—Letter from Daniel A. Seeger to Selective Service System, dated November 3, 1953 requesting 2-S Classification	114	65
11—Letter from Daniel A. Seeger to Selective Service System, dated July 12, 1957, Claim for exemption as conscientious objector and postmarked envelope	115	66
12—Letter from Board to Daniel A. Seeger, dated July 19, 1957, mailing Special Form 150 for Conscientious Objector	117	68
13—Special Form for Conscientious Objector (SSS Form 150)	118	69
19—Summary of Interview before Board	127	78
20—Statement of appeal, dated October 21, 1958	128	79
21—Letter from Daniel A. Seeger to Selective Service System, dated October 27, 1958	129	80
24—New York City Selective Service System Form entitled, "Questions To Be Answered By A. Registrant Claiming To Be A Conscientious Objector and/or Minister of Religion", dated November 14, 1958	130	81
26—Appeal Board letter to U. S. Attorney, dated March 16, 1959	134	85
27-A—Letter from Daniel A. Seeger to Mr. John M. Lockwood (Hearing Officer), dated September 2, 1959	135	86
27-B—Reply letter from John M. Lockwood (Hearing Officer) to Daniel A. Seeger, dated September 3, 1959	136	87
27-C—Letter from Daniel A. Seeger to John M. Lockwood (Hearing Officer), dated September 8, 1959 with statement	137	88
31—Appeal Board Letter to Daniel A. Seeger, dated October 23, 1959 forwarding a copy of the recommendation of the Department of Justice	142	92
33-A—Letter from Daniel A. Seeger to Appeal Board, dated November 2, 1959 enclosing Statement	143	93
33-B—Letter of defendant's mother, Dorothy Seeger, dated November 17, 1959	154	104
34—Selective Service System—Individual Appeal Record Classifying defendant 1-A, dated May 9, 1960	160	110

	Original	Print
Additional record from the United States District Court for the Southern District of New York—Continued		
GOVERNMENT'S EXHIBITS—Continued		
36—Letter from Local Board to Daniel A. Seeger, dated May 24, 1960	161	111
37-A—Letter from Daniel A. Seeger to Local Board No. 66, dated June 3, 1960	162	112
37-C—Letter from Daniel A. Seeger to Director of Selective Service System, New York, dated June 3, 1960	163	113
37-D—Letter from Daniel A. Seeger to National Director of Selective Service, dated June 3, 1960	164	114
43—National Director's Appeal to The President, dated July 13, 1960	165	115
44—National Director's letter to Director, Selective Service System, New York, dated July 13, 1960	166	116
48—National Selective Service Appeal Board letter to Director, Selective Service, New York, dated August 25, 1960	167	117
51—Selective Service System—Order to Report For Induction, to Daniel A. Seeger, date of mailing October 3, 1960	168	118
52—Induction Officer's letter to U. S. Attorney, New York, dated October 20, 1960	169	119
56—Selective Service System, New York Headquarters letter to Local Board No. 66, dated November 30, 1960	170	120
61—Stipulation dated March 27, 1963 as to exhibits and defendant's refusal to submit to induction	171	121
Order extending time to file petition for writ of certiorari	173	122
Order allowing certiorari	174	123

[fols. a-3]

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket No. 28346

UNITED STATES OF AMERICA, Appellee,

against

DANIEL ANDREW SEEGER, Appellant.

On Appeal from the United States District Court for the Southern District of New York

Appellant's Appendix—Filed October 21, 1963

[File Endorsement Omitted.]

[fol. 4] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 62 CR 003

UNITED STATES OF AMERICA,

v.

DANIEL ANDREW SEEGER

JUDGMENT APPEALED FROM—May 28, 1963

On this 28th day of May, 1963 came the attorney for the government and the defendant appeared in person and by counsel

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty by the Court, defendant having waived trial by jury of the offense of a registrant under the Universal Military Training and Service Act, unlawfully and knowingly failing, neglecting and refusing to perform a duty required of him under and in execution of said Act and the rules and regulations and directives made pursuant thereto, to wit, to submit to induction at the time and place fixed in an Order to Report for Induction mailed to him by his Selective Service System Local Board (Title 50, App., Section 462, U. S. Code) as charged and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

[fol. 5] It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and one (1) day.

Defendant released on his own recognizance pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal

or other qualified officer and that the copy serve as the commitment of the defendant.

Richard H. Levet, United States District Judge,
James E. Valeche, Clerk.

[fols. 6-7] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DANIEL ANDREW SEEGER, Defendant.

INDICTMENT—Filed November 13, 1962

The Grand Jury charges:

On or about the 20th day of October, 1960, in the Southern District of New York, DANIEL ANDREW SEEGER, the defendant, being a registrant under the Universal Military Training and Service Act, Title 50 Appendix, United States Code, Section 451 et. seq., unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of said Act and the rules and regulations and directives made pursuant thereto, to wit, to submit to induction at the time and place fixed in an Order to Report for Induction mailed him by his Selective Service System Local Board.

(Title 50, App., United States Code, Section 462; 32 Code of Federal Regulations, Section 1632.14)

——, ——, Foreman

——, ——, Vincent L. Broderick, United States Attorney.

[fol. 8] GOVERNMENT'S EXHIBIT 30(a)

Recommendation of Department of Justice and Resumé of F.B.I. Reports

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C.

Oct 22 1959.

Chairman, Appeal Board, Eastern
District of New York, Panel #2,
Selective Service System,
205 East 42d. Street,
New York 17, New York.

Dear Sir:

Re: Daniel Andrew Seeger, Conscientious Objector

As required by section 6(j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the above-mentioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Mr. John Marshall Lockwood, a Hearing Officer for the Department of Justice.

The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Resumé of the Inquiry attached hereto and made a part hereof.

The registrant was born September 3, 1935. His parents are members of the Roman Catholic Church and the registrant was brought up in that faith. He is not now affiliated with or a member in any particular religious denomination. The registrant graduated from the Bayside [fol. 9] High School, Bayside, Queens, New York, on June 25, 1963. He ranked 35 in a class of 594. He was active in extra-curricular activities in that school, a member of an honorary society, and received the Pi Mu Epsilon award in mathematics. He attended the Cooper Union for the Advancement of Science and Arts from September 1953 to June 1954. He entered Queens College, Flushing, New York, in September 1954 where he was still enrolled at

the time of the inquiry on April 7, 1959. In his SSS Form 100 received by the local board October 21, 1953 the registrant expressed the opinion that his classification should be Class II-S. He did not execute Series XIV, conscientious objection to war. At various times the registrant received classification in Classes 1-A and II-S. He was last classified in Class 1-A on October 21, 1958 from which classification he appealed.

Attached hereto and made a part hereof are Exhibits A through D which include correspondence between the registrant and the Department of Justice Hearing Officer as well as Items submitted by the registrant to the Hearing Officer.

The registrant appeared before the Hearing Officer in Brooklyn, New York, on September 10, 1959, accompanied by two witnesses, a professor of the English Department, Queens College, Long Island, New York, and a friend who was also a classmate, of the registrant. The Hearing Officer reported that registrant answered questions in a willing and straight-forward manner and he stated that registrant is obviously a very intelligent young man, as evidenced by his scholastic record. The registrant told [fol. 10] the Hearing Officer that he considered himself to be a 100% pacifist and that he had held pacifist views for as long as he could remember. The registrant evidenced surprise and annoyance that the fact that he was a pacifist was not well known as indicated by the Resumé of the Inquiry. He told the Hearing Officer that he had discussed his views with many people and that, although he was not in the habit of volunteering his views, he was neither ashamed of them nor reluctant to discuss them with anyone at any time. The registrant indicated that he was not affiliated with any of the sects to which many of the conscientious objectors belong but had strong sympathetic support for the Quaker movement. He also admitted sympathy with some of the views of Jehovah's Witnesses but criticized their dogmatic approach to the problem. He expressed the feeling that this is a personal problem and the individual himself must make up his own mind as to how he feels toward his fellow man. The registrant testified that he had been convinced after a thorough research and reading into history, particularly various religious

trends, theoriet, and teachings, that peace throughout the world could only be accomplished by the laying down of arms by all.

The Hearing Officer queried the registrant about his willingness to serve with medical units of the armed services where he would not be required to carry or bear arms. The registrant expressed the feeling that this would only be "patching them up to put them back at firing again" and he stated that he would refuse to so serve. He told the Hearing Officer that he would [fol. 11] have no objection to an assignment to civilian work contributing to the maintenance of the national health, safety, or interest unless such work in some way involved the manufacture, preparation, or sale of armaments or other implements of war. If the assignment required such activities he would refuse to perform such service.

The registrant's friend who appeared as a witness at the hearing and who has served with the armed forces advised the Hearing Officer that he did not agree with registrant's views but believed them completely sincere and deeply engrained in Seeger's mind and personal approach to life. He stated that he and registrant had been best friends for three or four years at Queens College and had had numerous discussions on the subject of pacifism. He said there was absolutely no doubt in his mind that Seeger was a sincere conscientious objector. The English Professor who appeared as a witness for the registrant at the hearing told the Hearing Officer that he had had many discussions with the registrant about the latter's views and that, although he did not agree with them, he was convinced that registrant's beliefs were completely sincere. The Hearing Officer considered the Professor's statements reliable. The Hearing Officer reported that the registrant impressed him as a truthful, decent young citizen who conscientiously objects to joining in any manner any activity which would bear on military affairs. He stated that he was inclined to believe that the registrant, because of his extreme intelligence and lucidity, might create a problem if taken into the military service in that he would not be beyond preaching non-violent sub- [fol. 12] version if it would enhance his pacifist purpose. The Hearing Officer stated that these remarks are not

intended to imply disloyalty to the United States on the part of the registrant, but merely a feeling that this young man might let his beliefs cloud over his loyalties.

The Hearing Officer concluded that the registrant is completely sincere in making his claim and that the character of registrant's beliefs, as adduced at the hearing and from the various documents on file, are honest. He found that the registrant is opposed to participation in war in any form; that his conscientious objections are based upon his individual training and belief, both of which include research in religious and cultural fields; that the registrant is sincere in his claim which is made in good faith. He recommended that the appeal of the registrant based upon grounds of conscientious objection be sustained.

In his SSS Form 150 received by the local board on July 29, 1959 the registrant struck out the words "training and" in Paragraph (B) of Series I and placed the word religious in indirect quotation marks. In answer to Question 1, Series II of Form 150 the registrant did not check the yes or no squares but added a third square and placed a check mark therein followed by the words "Please see attached sheet". In the attached sheet the registrant's answer to the question stated, among other things:

> "Of course, the existance of God cannot be proven or disproven, and the essence of his nature cannot be determined. * * * The cosmic order does, perhaps, suggest a creative intelligence. But considering [fol. 13] the natural world outside of man, with its ceaseless struggle for survival and its indiscriminate distribution of catac*ylsm*ic natural phenomena, one may doubt that this intelligence is informed with a moral purpose. Rather it would appear that in human history the principle of righteousness has emerged very gradually from man's own painful efforts, uncertain and unblessed."

The registrant's answer to Question 2 of Series II is an interesting philosophical dissertation on the nature of his belief which is the basis of his claim made in Series I but it is not responsive to the last part of the question as

to whether his belief in a Supreme Being involves duties which to him are superior to those arising from any human relation. In answer to Question 3 as to when, how, and from whom or what source he received the training and acquired the belief which is the basis of his claim made in Series II, the registrant stated "Readings over the past ten months from:" following which he lists approximately a dozen authors and the names of publications which he has read. In answer to Question 4, the registrant stated:

> "I rely on no particular person for religious guidance. I resolve spiritual and ethical problems by reading relavent essays or books, by discussion and debate with colleagues, and ultimately, by following the dictates of my conscience."

In answer to Question 5, Series II, "Under what circumstances, if any, do you believe in the use of force" the registrant quotes Tolstoi and Bertrand Russell and states that he tends to favor Russell's broader outlook. The [fol. 14] registrant did not answer Question 6, Series II, which asked him to describe the actions and behavior in his life which in his opinion most conspicuously demonstrate the consistency and depth of his "religious convictions".

As to character, conduct, and moral behavior the Resumé of the Inquiry is favorable to the registrant. One interviewee advised that registrant's conscientious-objector claim was probably based upon ethical and philosophical grounds. A young lady who has known the registrant for almost a year and has been keeping company with him regards him very highly and considers him to be an extremely gentle person. She advised that registrant is a very philosophical person and stated that he bases his beliefs on his own philosophy. She also said that the registrant is an agnostic. A friend and former co-worker of the registrant advised that the registrant had told him that he, the registrant, came to his convictions as a conscientious objector based upon his reading and his own philosophy.

A letter in the registrant's file addressed to the Appeal Board and dated October 21, 1958 signed by a Harry

Herschman, which states that "the basis for the appeal is that the registrant believes himself to be a conscientious objector, by virtue of his aversion to war in any aspect, including civilian aid or medical assistance to our armed forces." The registrant first expressed his conscientious-objector views to his local board in a letter dated July 12, 1957 wherein he stated among other things:

> "My decision arises from what I believe to be considerations of validity from the standpoint of the wel- [fol. 15] fare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain. I have concluded that war from the practical standpoint is futile and self-defeating, and that from the more important moral standpoint, it is unethical."

The requirement for exemption as a conscientious objector under section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), is that the claim be based on a person's "religious training and belief." The section defines religious training and belief as an individual's "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." Based upon the facts contained herein the Department of Justice concludes that the registrant has failed to make a claim within the meaning of section 6(j) of the Act, since his objections are not based upon religious training and belief in relation to a Supreme Being, as defined in said Act. See *U. S.* v. *Bendik*, 220 F. 2d 249 (2d. Cir. 1955), *U. S.* v. *DeLime*, 223 F. 2d 96 (3d. Cir. 1955), *Davidson* v. *U. S.*, 218 F. 2d 609 (9th Cir. 1954): Cert. granted, 349 U. S. 918 (1955); Court of Appeals judgment vacated and cause remanded; conviction affirmed 225 F. 2d 836 (9th Cir. 1955); Cert. den. 350 U. S. 887 (1955), *Clark* v. *U. S.*, 236 F. 2d 13 (9th Cir. 1956).

With due regard to the determination of the Hearing Officer the Department of Justice finds that the registrant's claim is not sustained and it recommends that it [fol. 16] be not sustained by your Board.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely, T. Oscar Smith, Chief, Conscientious-Objector Section

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GOVERMENT'S EXHIBIT 30(b)

Resumé of the Inquiry

Re: Daniel Andrew Seeger, Conscientious Objector

Registrant's date of birth was verified as September 3, 1935. Records of the Bayside High School, Bayside, Queens, New York, reflect that registrant attended that school from September 1949 until he graduated on June 25, 1953. He ranked 35 in a class of 594. He was a member of the Newman Club, the school choir, and the Senior Arista, an honor society. He was an excellent student in Mathematics and Science and received the Pi Mu Epsilon award for Mathematics. No derogatory information was contained in the school records concerning the registrant. He came to the school from St. Kevin's Grammar School, Flushing.

One teacher who was interviewed could not recall the registrant and knew nothing of his conscientious-objector claim. Another teacher advised that the registrant was very intelligent, interested in Economics and human wel- [fol. 17] fare, never inclined to radical thinking, a very fine student, and a mature person of the highest integrity and character. This teacher knew nothing of the registrant's conscientious-objector claim but felt that he was probably sincere. Another teacher advised that the registrant was very much interested in social problems. He described the registrant as a very serious-minded and intelligent person. He stated that the registrant was a very good student and participated in class discussions of the Universal Military Training Law like all other students. He knew nothing of registrant's conscientious-objector claim and could not comment upon the sincerity of his claim.

Records of the Cooper Union for the Advancement of Science and Arts reflect that the registrant entered that

school in September 1953 and left in June 1954. One professor who was interviewed advised that he had the registrant in class but could not recall him. An official of the school described the registrant as a very nice young man but appeared to be a little uncertain as to his aim in life. He said that the registrant had a very good record from high school but the competition was very keen in Electrical Engineering and he only ranked 22 in a class of 25 in Cooper Union. The records showed no disciplinary action and reflected that all the registrant's freshman teachers indicated that he was a nice young man but mixed up in his ideas as to his course of studies and they recommended that he transfer to another school. This official knew nothing of registrant's conscientious objection.

Records of Queens College, Flushing, New York, reflect that the registrant entered that college in September 1954 [fol. 18] and was still enrolled at the time of the inquiry on April 7, 1959.

An official of the college advised that registrant is majoring in Physics. He stated that the registrant is a very intelligent person of high moral character. He was active in student affairs, such as the Roundtable, Outdoor Club, Editor in Chief of the college newspaper, and Chief Justice of the Student Court in the fall of 1957. He was elected to Who's Who in American Colleges and Universities in 1957. He was described by the official as a very good student even though he failed three Physics courses in his senior year. He had no reason to question the registrant's moral character but was unaware of his belief concerning his conscientious-objector claim. Professors of the college who were interviewed agreed that the registrant was a very intelligent person with ability. None of the professors knew anything about registrant's conscientious-objector claim. Two of them believed registrant to be sincere and others could not comment upon his sincerity. He was not known to express any deep religious convictions nor any pacifist views and he never indicated any opposition to war or military service.

Registrant has been employed at the Marine Midland Trust Company as a clerk since December 10, 1957. Fellow employees commented favorably upon the registrant's character but did not know of his conscientious-objector claim

and could not comment upon his sincerity with respect to such claim. One employee advised that he and some of the other clerks discussed military service and teased the registrant about his having to go into the military service. He [fol. 19] stated that the registrant never expressed any objections to military service. He further advised that the registrant never discussed his psychological or religious beliefs and kept his affairs to himself.

An official of the Seawanhaka Corinthian Yacht Club advised that the registrant was employed from May 8, 1956 until September 15, 1956 and again from May 29, 1957 until September 15, 1957 at the club. He stated that the registrant started as a bellhop and later became a bartender. He stayed at the club during these periods of employment. The official described the registrant as a very nice young man who was completely trustworthy, an idealist, and a very gentle person, as evidenced by both his work and deeds. He said that registrant's moral behavior was above reproach and he believed the registrant was sincere in making his conscientious-objector claim although the registrant had never expressed any religious or moral convictions in this matter.

Registrant was employed part time for several months in 1957 for Lyle Stuart, Publisher, New York City. He was recommended highly as to character and integrity. While employed by the publisher registrant became acquainted with another employee who was a conscientious objector and it was reported that they talked about conscientious objectors. It was stated that registrant's conscientious-objector claim was probably based upon ethical and philosophical grounds. He was believed to be sincere in his claim.

Registrant was employed by the Equitable Life Assurance Society in the summer of 1953 and by Lever Brothers [fol. 20] in the summer of 1954. No one at either place of employment recalled registrant.

Neighbors in Flushing, New York commented favorably upon the registrant and his family. They advised that the registrant was raised as a Catholic and has two uncles who are priests. They stated that the family was a very fine, exceptionally religious family and they knew nothing concerning the registrant's leaving home. One neighbor

advised that registrant left home about a year and a half or two years ago because of a misunderstanding. He stated that the registrant visits home on week ends. Registrant currently resides at 328 West 89th Street. Current neighbors comment favorably upon registrant's character and reputation but were unable to comment upon the sincerity of his claim.

A young lady who has known the registrant for almost a year and has been keeping company with him regards the registrant very highly and considers him to be an extremely gentle person. She stated that registrant is a very philosophical person and he bases his beliefs on his own philosophy. She advised that the registrant has recently joined the American Friends Society and that he has done work on week ends for a mental hospital. She said that the registrant is an agnostic. She believes the registrant is absolutely sincere in his conscientious-objector claim and that this is based on his own conviction.

A friend and former co-oworker of the registrant who has known him approximately two years stated that the registrant is a person of very outstanding moral behavior. He said that registrant had told him that he was a conscientious objector and that he was particularly interested in this because he is writing a novel concerning a con- [fol. 21-23] scientious objector in the same circumstances as the registrant. He stated that the registrant had told him that he, the registrant, came to his convictions as a conscientious objector based upon his reading and his own philosophy. He stated that the registrant was aware that he also was sympathetic to pacifism. He advised that the registrant had either told him or indicated to him that he, the registrant, was willing to go to jail rather than serve miliary service. He expressed the belief that the registrant is sincere in his convictions as being opposed to military service.

An acquaintance of the registrant whom he met at the Corinthian Yacht Club, Oyster Bay, New York in the summer of 1956 advised that he would consider the registrant to be of good character and reputation. He stated that the registrant did not use profanity, did not smoke, and he had never known him to use alcoholic beverages. He described the registrant as a very shy person and stated that al-

though he had never discussed military service or conscientious objection with the registrant it was no surprise to him that the registrant would make such a claim. He stated that the registrant was brought up in a Catholic home but that he recalled during the summer of 1956 the registrant seldom, if ever, attended church. Based upon his knowledge of the registrant he considers him a sincere conscientious objector.

Credit records of Greater New York and criminal records of the New York City Police Department contained no information concerning the registrant.

Prepared: June 24, 1959

[fol. 24] In the United States District Court, Southern District of New York

62 Cr. 1003

United States of America,

against

Daniel Andrew Seeger, Defendant.

Appearances:

Robert M. Morgenthau, United States Attorney, Southern District of New York, Attorney for United States of America, Ezra H. Friedman, Assistant United States Attorney, Of Counsel.

Davies, Hardy & Schenck, Attorneys for Defendant, 2 Broadway, New York, N. Y., Kenneth W. Greenawalt, Thomas T. Adams, Of Counsel.

Opinion for April 24, 1963

Levet, D. J.

On November 13, 1962, the defendant was indicted for unlawfully and knowingly failing "to submit to induction at the time and place fixed in an Order to Report for Induction mailed to him by his Selective Service System Local Board." 50 USC App. §462; 32 C.F.R. §1632.14.

[fol. 25] Defendant pleaded "not guilty" on November 20, 1962. A trial was conducted on March 26, 1963, at which time defendant waived a trial by jury. At the close of the trial decision was reserved.

It is undisputed that defendant's Selective Service File (Exs. 1-60) accurately discloses the following:

Defendant registered with Local Board 66 upon his eighteenth birthday on September 4, 1953. On October 21, 1953 he filed his Classification Questionnaire (S.S.S. Form 100) (Ex. 3). It reflected that he was unmarried and was a chemical engineering student at Cooper Union School of Engineering. He did not execute the claim for conscientious objector exemption which appears on page 7 of the Questionnaire. He stated that he thought he was entitled to deferment as a student.

The Minutes of Board Action (p. 8 of Questionnaire) reflect that he was initially classified 1-A on October 27, 1953 and that he was reclassified 2-S as a student on July 26, 1955. He remained in that classification until August 26, 1958, when he was reclassified 1-A.

On July 15, 1957 defendant wrote to the Board that he was conscientiously opposed to participation in war. He was mailed a Special Form for Conscientious Objectors (S.S.S. Form 150) (Ex. 11) which he filed with supporting documents on July 29, 1957.

On the Special Form for Conscientious Objectors the defendant executed the Series I claim for exemption for both combatant and non-combatant service which reads:

> "(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed [fol. 26] to participation in non-combatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and non-combatant training and service in the Armed Forces."

The defendant placed quotation marks around the word "religious" and struck out the words "training and."

In response to the Series II question, "1. Do you believe in a Supreme Being?" the defendant checked neither the "Yes" nor the "No" box but added a third box and the

notation: "Please see attached sheet." The Board was also referred to the attached sheet for the answer to the Series II question:

> "2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation."

In the five-page statement attached to the Special Form the defendant stated in answer to the question as to his belief in a Supreme Being:

> "Of course, the existence of God cannot be proven or disproven, and the essence of his nature cannot be determined. I prefer to admit this and leave the question open rather than answer 'yes' or 'no'. * * *"

His answer to Series II, question 2, describing the views on which his objections to service are based, does not reflect that he believes in a Supreme Being imposing obligations on him superior to those arising from any human relation.

[fol. 27] The defendant was continued in classification 2-S until August 26, 1958, when he was reclassified 1-A. On October 17, 1958, defendant was ordered to report for a pre-induction physical on October 29, 1958. On October 20, 1958, the Board received a request for a personal appearance, which was had on October 21, 1958. Following the personal appearance the Board voted to continue the 1-A classification.

The defendant prosecuted an appeal to the Appeal Board. The Appeal Board tentatively determined that he was not entitled to classification 1-O and forwarded the file to the Department of Justice for an advisory opinion.

The Federal Bureau of Investigation conducted a background investigation. Its reports were summarized in a resume (Ex. 30B) and the files assigned to a Hearing Officer. The defendant was provided with a copy of the resume prior to the hearing which was held on September 10, 1959. Two witnesses appeared on defendant's behalf. The hearing officer reported to the Department of Justice

that he found the defendant to be sincere in his objection to war and recommended that exemption be granted. The Department of Justice, however, concluded that the defendant's objections were not based upon religious training and belief as required and defined by §6(j) of the Universal Military Training and Service Act, and recommended to the Appeal Board that the exemption be denied.

The Appeal Board furnished the defendant with a copy of the Department of Justice recommendation and received a reply from him. The Appeal Board classified the defendant 1-A by unanimous vote on May 24, 1960. Upon [fol. 28] the defendant's request, the National Director of Selective Service appealed on his behalf to the Presidential Appeal Board. The Presidential Appeal Board classified the defendant 1-A by a unanimous vote on August 25, 1960.

On October 3, 1960, defendant's Local Board mailed him an Order to Report for Induction on October 20, 1960 at the Armed Forces Examination and Induction Station, 39 Whitehall Street, New York, N. Y. On October 20, 1960, the defendant reported as directed and after having been found acceptable for military service refused to submit to induction.

Counsel also stipulated (Ex. 6) that defendant "refused to submit to induction at the time and place aforesaid claiming that the order was invalid as he had wrongfully been denied exemption as a conscientious objector."

Therefore, the sole issue that remains is the validity of the denial of exemption. In this connection, defendant argues that 50 USC App. §456(j) is unconstitutional.

The Scope of Judicial Review

"There is no direct judicial review of the actions of the Appeal Boards. Questions concerning the classification of the registrant may be raised either in a petition for habeas corpus or as a defense to prosecution for failure to submit to induction into the armed forces." Witmer *v.* United States, 348 U. S. 375, 377 (1954); see also Estep *v.* United States, 327 U. S. 114 (1946).

"The range of review is the narrowest known to law."

United States *v.* Corliss, 280 F. 2d 808, 811 (2 Cir. 1960), [fol. 29] cert. denied, 364 U. S. 884; Blalock *v.* United States, 247 F. 2d 615 (4 Cir.), cert. denied, 355 U. S. 882 (1957); Campbell *v.* United States, 221 F. 2d 454 (4 Cir. 1955).

As was said in Blalock, supra, at page 619:

> "The 'clearly erroneous' rule applied in equity appeals has no place here, nor even the 'substantial evidence' rule of the Administrative Procedure Act, 5 U.S.C.A. §1009. Congress gave the courts no general authority of revision over draft board proceedings, and we have authority to reverse only if there is denial of basic procedural fairness or if the conclusion of the board is without any basis in fact. Witmer *v.* United States, 348 U. S. 375, 99 L. Ed. 428; Goff *v.* United States, 4 Cir., 135 F. 2d 610."

This court has defined its function as follows:

> "The function of the District Court in cases such as these is to examine the entire file or record relating to the registrant's claim for conscientious objector classification to determine if there is any basis in fact to support the Board's determination. 'When the record discloses any evidence of whatever nature which is incompatible with the claim of exemption we may not inquire further as to the correctness of the board's order.' United States *v.* Simmons, 7 Cir., 1954, 213 F. 2d 901, 904, reversed on other grounds Simmons *v.* United States, 348 U. S. 397, 75 S. Ct. 397, 99 L. Ed. 453. Courts cannot substitute their judgment on the weight of the evidence for that of the Board. Nor need they look for substantial evidence to support such determination." United States *v.* Corliss, 173 F. Supp. 677, 680 (S.D.N.Y. 1959), aff'd. 280 F. 2d 808 (2 Cir. 1960), cert. denied, 364 U. S. 884.

[fol. 30] The Reports of the Federal Bureau of Investigation and the Hearing Officer

Defendant contends that he was denied due process because he was not given copies of the above reports. This contention is without merit. The Appeal Board's denial of defendant's claim for exemption was based upon the recommendation of the Department of Justice (Ex. 30A), which, in turn, rested essentially on statement of nonbelief filed by defendant. This being the case, defendant has no right to either set of reports. Gonzales *v.* United States, 364 U. S. 59, 63-66 (1960). See also Nugent *v.* United States, 346 U. S. 1 (1953); United States *v.* Corliss, 280 F. 2d 808, 810 (2 Cir. 1960), cert. denied 364 U. S. 884 (1960).

Constitutionality of Title 50 USC App. §456(j)

The pertinent provisions of Title 50 USC App. §456(j) are as follows:

> "(j) Nothing contained in this title [sections 451-454 and 455-471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *"

[fol. 31] Section 5(g) of the Selective Training and Service Act of 1940 (50 USC App. § 305(g)) provided as follows:

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

In amending the 1940 Act and in enacting Section 6(j) of the 1948 Act (which is identical with § 6(j) of the 1951 Act here under discussion, Congress added the following language to the quotation above from the 1940 Act:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

Defendant's contentions as to the unconstitutionality of the above-mentioned clause are as follows:

1. Congress by passage of the 1948 amendment restricted a prior definition and the concept of "Religious training and belief" so as to relate it only to a belief "in a relation to a Supreme Being."

2. Congress thus created a preference and an aid in favor of conscientious objections *who have a belief in a Supreme Being* against those whose objection is related to or based upon some other type of religious training and belief or on a non-religious training and belief.

[fol. 32] 3. Congress has thus, in effect, established as an official religion a religion that is related to a belief in a Supreme Being and has placed the support of the government behind this particular religious belief, thus violating the Establishment Clause of the First Amendment, the Due Process Clause of the Fifth Amendment, and the religious test clause of Article VI, Clause 3 of the Constitution providing that "no religious test shall ever be required as a qualification to any office or public trust under the United States."

The First Amendment to the United States Constitution, in the applicable portion, states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Fifth Amendment provides that Congress may not deprive a person of life, liberty or property without due process of law.

There was proof by stipulation that the grounds on which defendant claimed exemption are religious and

arise from religious training and belief by reason of which defendant is conscientiously opposed to participation in war fall within the definitions of religion as set forth in the following cases, determined by the Second Circuit Court of Appeals: United States *v.* Kauten, 133 F. 2d 703 (1943); United States ex rel. Phillips *v.* Downer, 135 F. 2d 521 (1943); United States ex rel. Reel *v.* Badt, 141 F. 2d 845 (1944), cert. dismissed 328 U. S. 817. (See minutes 35, 36)

In substance, those cases decided under the 1940 Act held that a sincere, absolute abhorrence of all war as ethically wrong, proceeded from a "religious impulse" and met the test of the statute, which, in the same language [fol. 33] as the 1948 and 1951 Acts, exempted one who "by reason of religious training and belief is opposed to participation in war in any form" without further elaboration. A diametrically contrary conclusion was reached by the Ninth Circuit Court of Appeals in Berman *v.* United States, 156 F. 2d 377 (9 Cir. 1946), cert. denied, 329 U. S. 795. It was there held that Congress intended to exempt only those who based their objections on belief in a deity commanding abstinence from war on pain of supernatural sanction.

In enacting Section 6(j) of the 1948 Act (which is identical with Section 6(j) of the 1951 Act here under discussion), Congress explicitly adopted the view of the *Berman* case and added the limiting definition:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

See Selective Service Act of 1948 Senate Committee Report, United States Code Congressional Service, 80th Congress, 1948, 2d Session, P. 1989 at p. 2002.

However, a defendant's inability to assert a belief in a Supreme Being as a basis for the claim of exemption has been sustained as sufficient for a denial of a claim for exemption. United States *v.* Bendik, 220 F. 2d 249 (2

Cir. 1955); United States *v.* DeLime, 223 F. 2d 96 (3 Cir. 1955); Davidson *v.* United States, 225 F. 2d 836 (9 Cir. 1955); Clark *v.* United States, 236 F. 2d 13 (9 Cir. 1956), cert. denied, 352 U. S. 882.

[fol. 34] In the *Bendik* case, *supra*, Judge Smith, speaking for the Second Circuit, wrote:

> "* * * the sincerity of his conscientious scruples against service was immaterial, since admittedly they were not founded on belief in a Supreme Being, a requirement as a ground for deferment under the Act, 50 U.S.C.A. Appendix, §456(j). Berman *v.* United States, 9 Cir., 156 F. 2d 377, certiorari denied 329 U. S. 795, 67 S. Ct. 480, 91 L. Ed. 680. * * *" (p. 252)

In *Clark, supra*, the defendant raised the same constitutional questions relief upon by defendant here but the Ninth Circuit upheld denial of exemption. Certiorari was denied. See also George *v.* United States, 196 F. 2d 445 (9 Cir. 1952), cert. denied, 344 U. S. 843.

There is no violation of the religious test provision of Article VI, Clause 3. Exemption from military service can hardly be deemed an "office or public trust under the United States." Such a view is indeed specious. Clark *v.* United States, 236 F. 2d 13, 23 (9 Cir. 1956), cert. denied, 352 U. S. 882. Cf. Torcaso *v.* Watkins, 367 U. S. 488 (1961).

Likewise, Congress has not established a church or coerced religious belief, in violation of Amendment I. (Arver *v.* United States (Selective Draft Law Cases), 245 U. S. 366 (1918)). Congress has not set up a state church, nor aided any religion, nor compelled attendance or non-attendance at any church. Neither has it compelled profession or refraining from profession of any belief or disbelief, nor imposed punishment for any conduct. No financial support of government has been devoted to any [fol. 35] particular religious belief (cf. Everson *v.* Board of Education, 330 U. S. 1 (1947)) nor has any compulsive religious service been supported (cf. Engel *v.* Vitale, 370 U. S. 421 (1962)).

Congress, by Article 1, Section 8, is given power to raise

and support armies and to provide and maintain a navy. Therefore, "Congress has power to raise armies, to determine who will serve in such armies, and who shall be exempt in time of peace and in time of war. Such powers are essential to national security. See United States *v.* Macintosh, 283 U. S. 605, 51 S. Ct. 570, 75 L. Ed. 1302; United States *v.* Henderson, 7 Cir., 1950, 180 F. 2d 711, certiorari denied, 1950, 339 U. S. 963, 70 S. Ct. 997, 94 L. Ed. 1372; Richter *v.* United States, 9 Cir., 1950, 181 F. 2d 591, certiorari denied, 1950, 340 U. S. 892, 71 S. Ct. 199, 95 L. Ed. 647; Warren *v.* United States, 10 Cir., 1949, 177 F. 2d 596, certiorari denied, 1950, 338 U. S. 947, 70 S. Ct. 485, 94 L. Ed. 585. * * *" United States *v.* Bartell, 144 F. Supp. 793, 796 (S. D. N. Y. 1956). The question of exemption from military service is a part of the procedure of raising an army, which is vested in Congress and its instrumentalities. United States *v.* Hearn, 153 F. 2d 186, 188 (5 Cir. 1946), cert. dismissed, 329 U. S. 667. The war power tolerates no limitations except those found in the Constitution or in applicable principles of international law. United States *v.* Macintosh, 283 U. S. 605, 622, overruled on other grounds, Girouard *v.* United States, 328 U. S. 61 (1946).

Defendant relies upon certain decisions of the United States Supreme Court post-dating draft exemption determinations, to wit, Torcaso *v.* Watkins, 367 U. S. 488, [fol. 36] 495 (1961); Engel *v.* Vitale, 370 U. S. 421, 430, 431, 432 (1962); McGowan *v.* Maryland, 366 U. S. 420 (1961); Everson *v.* Board of Education, 330 U. S. 1, 15, 16 (1947); McCollum *v.* Board of Education, 333 U. S. 203, 210, 211 (1948).

There is nothing in these decisions to justify the position defendant takes. *Torcaso*, supra at 493 quotes from *Everson*, supra: "Neither [i.e., state or nation] can pass laws which aid one religion, aid all religions, or prefer one religion over another." I do not interpret this statement to make it improper for Congress to exempt from military service certain individuals who are defined in the statute in question. Such policy does not aid one religion or all religions or prefer one religion over another. It merely classifies those who, under certain conditions

there specified, may secure exemption from military service. Certain individuals are affected but not religious organizations. *Everson*, supra, like *McCollum*, supra, involved questions of the power of a state to utilize its tax-supported public school system in aid of religious instruction. Neither does it appear that defendant can draw any aid or comfort from McGowan *v.* Maryland, supra, which related to Sunday Closing Laws, or from Engle *v.* Vitale, supra, the public school prayer case.

Other cases such as Cantwell *v.* Connecticut, 310 U. S. 296 (1940); Washington Ethical Society *v.* District of Columbia, 249 F. 2d 127 (D. C. Cir. 1957); and Fellowship of Humanity *v.* County of Alameda, 153 C. A. 2d 673, 315 P. 2d 394, have no bearing, as I see it, upon the claim of defendant.

[fols. 37-43] Since the Congress has the right to determine who shall serve and who shall be exempt, it has the power to define the categories of those who may be thus exempted. Rase *v.* United States, 129 F. 2d 204 (6 Cir. 1942); United States *v.* Bartell, 144 F. Supp. 793, 796 (S.D.N.Y. 1956); see also Korte *v.* United States, 260 F. 2d 633 (9 Cir. 1958), cert. denied, 358 U. S. 928. Therefore, exemption from military service is a matter of legislative grace and not a matter of right. Korte *v.* United States, supra at 635.

In short, defendant's attack on the clause here involved is not new. Congress is bound to raise armies. No invidious discrimination exists. It is within the power of Congress to enable reasonable classfications to achieve the ends sought. No religion is thereby established. No freedom of worship is invaded. No compulsive acts are required. All persons of the class of defendant receive equal treatment. Congress, which has a right to refuse all exemptions, has a clear right to limit such exemptions. The statute determines those who may come within the terms of the exemptive grace, the policy which the legislative branch is empowered to select. The section involved is constitutional and there was a "basis in fact" for the Appeal Board's denial of exemption.

The defendant is, therefore, held guilty. Sentence is

set for Wednesday, May 15, 1963, at 10:00 A.M. in Room 705. The customary pre-sentence report is to be prepared.

Richard H. Levet, United States District Judge.

Dated: New York, N. Y., April 24, 1963.

[fol. 44] IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 206—September Term, 1963.

Argued November 15, 1963

Docket No. 28346

UNITED STATES OF AMERICA, Appellee,

v.

DANIEL ANDREW SEEGER, Defendant-Appellant.

Before: Lumbard, *Chief Judge*, and Kaufman and Hays, *Circuit Judges*.

Appeal from a judgment of conviction for refusal to submit to induction in the Armed Forces, 50 U. S. C. App. §462, after a trial before Levet, *J.*, without a jury, in the United States District Court for the Southern District of New York.

Judgment of conviction reversed.

Ezra H. Friedman, Assistant United States Attorney for the Southern District of New York, New York, N. Y. (Robert M. Morgenthau, United States Attorney, and Andrew T. McEvoy, Jr., and Robert J. Geniesse, Assistant United States Attorneys, on the brief), *for appellee*.

[fol. 45] Kenneth W. Greenawalt, New York, N. Y. (Lawrence P. J. Bonaguidi and Davies, Hardy & Schenck, on the brief), *for defendant-appellant*.

OPINION—January 20, 1964

KAUFMAN, *Circuit Judge:*

On this appeal, Daniel Andrew Seeger contends that he was improperly denied an exemption from military service because his conscientious objections were not dependent upon "a belief in a relation to a Supreme Being" as required by §6(j) of the Universal Military Training and Service Act, 50 U. S. C. App. §456(j). Seeger was convicted of violating 50 U. S. C. App. §462, because of his refusal to submit to induction, as ordered by his local Selective Service Board. At his trial before Judge Levet without a jury, he stipulated that he received an induction notice and that he refused to comply with its terms.

The statute in question, as revised in 1948, provides that the Selective Service Act shall not "be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." 50 U. S. C. App. §456(j). In filling out the form for those who claim conscientious objector status, Seeger found himself unable to assert categorically that he believed in a Supreme Being.

Although the government has conceded that Seeger's abhorrence of war is both sincere and predicated on "religious training and belief," as the phrase had been defined by [fol. 46] this Court prior to the addition of the "Supreme Being" clause to the statute, *United States* v. *Kauten*, 133 F. 2d 703 (2d Cir. 1943), appellant's draft board denied the exemption on the basis of its finding that Seeger's views were not grounded upon "a belief in a relation to a Supreme Being." Seeger asserts that the "Supreme Being" requirement, as applied to him, constitutes a law respecting an establishment of religion, within the meaning of the First Amendment, and an arbitrary classification, violative of the due process clause of the Fifth Amendment.

I

As required by law, Seeger registered with his local draft board upon attaining his eighteenth birthday in September of 1953. Apparently, his pacifist sympathies had not yet become fully developed, for in filling out his classification questionnaire, he ignored the claim for conscientious objector exemption, and simply indicated that he believed himself entitled to a student deferment. Initially classified 1-A, Seeger subsequently received the 2-S deferment and remained in that classification until August, 1958, when he was once again reclassified as 1-A.

On July 12, 1957, Seeger wrote to his local board, and for the first time revealed the conscientious objections to military service which were to lead to his refusal to submit to induction, and ultimately, to his conviction. In this letter, and in the forms and statements which soon followed, he sought to put into words the deeply-rooted beliefs and sentiments which formed the basis of his claim for an exemption.

The initial letter was itself not lengthy. "As a result of the resolution of a number of problems of conscience with which I have been preoccupied for the past months," Seeger wrote, "I am bound to declare myself unwilling to participate in any violent military conflict, or in ac- [fol. 47] tivities made in preparation for such an undertaking. My decision arises from what I believe to be considerations of validity from the standpoint of the welfare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain. I have concluded that war, from the practical standpoint, is futile and self-defeating, and that from the more important moral standpoint, it is unethical."

The nature and foundation of Seeger's objections were further illuminated in his response to the special form for conscientious objectors, prepared by the Selective Service System and forwarded to appellant by his local board. Although executing the claim for exemption from both combatant and non-combatant training and service, he significantly altered the wording of the printed form. Had he adopted the printed statement verbatim, Seeger would have declared that he was, "by reason of my religious

training and belief, conscientiously opposed to participation in war in any form * * *" Seeger was willing to endorse this oath as his own, but only after placing quotation marks around the word "religious," and deleting the words "training and."

His reply to the first question on the form, which inquired into his belief in a Supreme Being, was ultimately to prove fatal to Seeger's claim. Refusing to assert a simple belief or disbelief in a deity, Seeger felt compelled to express his convictions in more extensive terms. In a statement attached to the questionnaire, he explained his feeling that "the existence of God cannot be proven or disproven, and the essence of His nature cannot be determined. I prefer to admit this, and leave the question open rather than answer 'yes' or 'no.'" Seeger was anxious to explain, however, that "skepticism or disbelief in the existence of God does not necessarily mean lack of faith in anything whatsoever * * * Such personages as Plato, [fol. 48] Aristotle and Spinoza evolved comprehensive ethical systems of intellectual and moral integrity without belief in God, except in the remotest sense." Finally, rejecting dependence upon his Creator for a guide to morality, Seeger asserted "more respect for * * * belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed."

With obvious sincerity, Seeger articulately attempted further to expound the ethical position to which he felt driven by his conscience. "It is our moral responsibility," he wrote, "to search for a way to maintain the recognition of the dignity and worth of the individual, the faith in reason, freedom, and individuality, and the opportunity to improve life for which democracy stands." In language which underscored the ethical foundation of his faith, he decried "the tremendous spiritual price that man pays for his willingness to resort to the mass destruction of human life to perpetrate his 'ideals.'" "I cannot," Seeger insisted, "participate in actions which betray the cause of freedom and humanity. Experience with the past indicates that our armament policy will lead to war, and war, with its indiscriminate crushing of human personality, cannot preserve moral values. * * * To resort to immoral means is not

to preserve or vindicate moral values, but only to become collaborators in destroying all moral life among men."

Unmoved by his appeal, the selective service board voted to retain Seeger's 1-A classification, and ordered him to report for a pre-induction physical examination. When a personal appearance before the board failed to produce a different result, Seeger sought review by an Appeal Board which, in routine fashion, forwarded his file to the Department of Justice for an advisory opinion. The Department, in turn, requested the Federal Bureau of Investigation, as it does in all such cases, to investigate the accuracy and sincerity of Seeger's claims. And, as a result of this investigation, a highly favorable portrait of the [fol. 49] appellant began to develop.

Seeger, it was revealed, was the son of an "exceptionally religious" Roman Catholic family, and two of his uncles had become priests. An honor student in high school, Seeger's academic record in college was outstanding, and he had been selected as editor-in-chief of his college newspaper. Friends, teachers and employers interviewed by the Bureau spoke highly of his personal qualities, with particular emphasis being placed on Seeger's unquestioned integrity and sincerity. It was noted, finally, that Seeger had no record whatsoever of legal or economic difficulties.

A resumé of this investigation was forwarded to a Hearing Officer of the Department of Justice, and a hearing was conducted in which two witnesses joined Seeger to appear in his behalf. As summarized in the report of the Justice Department, introduced into evidence below, the Hearing Officer reported that Seeger "impressed him as a truthful decent young citizen who conscientiously objects to joining in any manner any activity which would bear on military affairs." Emphasizing Seeger's "extreme intelligence and lucidity," the Officer concluded "that the registrant is completely sincere in making his claim and that the character of registrant's beliefs, as adduced at the hearing and from the various documents on file, are honest." As further summarized by the Justice Department, the Officer added that Seeger "is opposed to participation in war in any form; that his conscientious objections are based upon his individual training and belief, both of which include research in religious and cultural fields;

[and] that the registrant is sincere in his claim which is made in good faith." The Hearing Officer concluded by recommending that the "appeal of the registrant based upon grounds of conscientious objection be sustained." [fol. 50] Despite this recommendation and the results of the FBI investigation, the Justice Department advised against allowing Seeger an exemption. It is immediately apparent from a reading of the Department's report that its decision rested entirely on the finding that Seeger's objections, however, sincere, were not based upon "a belief in a relation to a Supreme Being," as required by §6(j) of the Act. Presumably for the same reason, the Appeal Board voted unanimously to retain Seeger's 1-A classification. The Presidential Appeal Board affirmed, and Seeger was ordered to report for induction. Reporting as directed, and having been found acceptable for military service, Seeger refused to submit to induction and the present prosecution and conviction ensued.[1]

II

The legislative background which underlies our present draft laws and their exemption for conscientious objectors has been thoroughly and recently explored by this court in *United States* v. *Jakobson*, —— F. 2d —— (2d Cir. 1963); See also Conklin, Conscientious Objector Provisions: A View in the Light of *Torcaso* v. *Watkins*, 51 Geo. L. J. 252 (1963). It would be in order, however, to review that background in brief resumé. The Draft Act of 1917, 40 Stat. 78, afforded a statutory exemption only to those objectors affiliated with a "well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form * * *" During the height of World War I, the constitutionality of this narrow provision was tersely upheld

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[1] Reporting, having been found acceptable, and taking all required steps short of the final submission to induction, Seeger is able here to challenge constitutional infirmities in the "jurisdiction" of the Board which denied him the exemption. *Estep* v. *United States*, 327 U. S. 114 (1946). Compare *Falbo* v. *United States*, 320 U. S. 549 (1944).

[fol. 51] against First Amendment challenges, despite its limitation to specific, organized historic pacifist churches. *Selective Draft Law Cases,* 245 U. S. 366, 389-90 (1918). But see Kurland, Religion and the Law 37-38 (1962).

The conscientious objector provisions of the 1940 selective service act were more broadly drafted. In this statute, in effect throughout the Second World War, an exemption from combatant training was afforded to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 54 Stat. 889. Called upon to illuminate the congressional reference to "religion," Augustus Hand, writing for this court in *United States* v. *Kauten,* 133 F. 2d 703 (2d Cir. 1943) offered this often-cited definition: "Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe—a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it. It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets * * * Recognition of this obligation moved the Greek poet Menander to write almost twenty-four hundred years ago: 'Conscience is a God to all mortals'; impelled Socrates to obey the voice of his 'Daimon' and led Wordsworth to characterize 'Duty' as the 'Stern Daughter of the Voice of God.'"

"There is a distinction," the Court continued, "between a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous and a conscientious objection to participation in any war under any circumstances. The latter, and not the former, may be the basis of exemption under the Act. The former is usually a political objection, while the later, we think, may justly be regarded as a response of the individual to an inward [fol. 52] mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse." 133 F. 2d at 708.

Yet, while this expanded concept of religious belief was adopted in this circuit, *United States ex rel. Phillips* v. *Downer,* 135 F. 2d 521 (2d Cir. 1943); *United States ex rel.*

Reel v. *Badt*, 141 F. 2d 845 (2d Cir. 1944), and was recognized as a constitutionally required definition of religion, *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 658 (1943) (dissenting opinion of Frankfurter, J.), it was repected in favor of a narrower standard by the Court of Appeals for the Ninth Circuit in *Berman* v. *United States*, 156 F. 2d 377, cert. denied, 329 U. S. 795 (1946). Over the vigorous dissent of Judge Denman, the *Berman* court held that a belief which was not dependent upon faith in a Diety or superhuman power was in no sense religious, as Congress used the term. In revising the conscientious objector provision for the Selective Service Act of 1948, Congress expressly approved the *Berman* definition, and specifically required a "belief in a relation to a Supreme Being" as a pre-requisite for exemption.

III

The exemption, as revised in 1948 by the addition of the "Supreme Being" definition of religion, has been upheld against constitutional challenges by the courts of this and other circuits on several occasions since its enactment. *United States* v. *Bendik*, 220 F. 2d 249 (2d Cir. 1955);[2] [fol. 53] *Clark* v. *United States*, 236 F. 2d 13 (9th Cir. 1956), cert. denied, 352 U. S. 882 (1956); *George* v. *United States*, 196 F. 2d 445 (9th Cir. 1952), cert. denied, 344 U. S. 843. Most recently, the Court of Appeals for the Ninth Circuit, in a brief, three-paragraph opinion, refused to reconsider its holdings in the *Clark* and *George* cases, and adhered to its position that the Supreme Being requirement

[2] In no real sense may our decision today be said to "overrule" *Bendik*. From a reading of the *Bendik* opinion, it is clear that the court did not consider the argument that the Supreme Being requirement distinguished *among* religious beliefs, the question we decide today. *Bendik*, rather, was concerned with the permissibility of a distinction between religious and nonreligious objectors. For this reason, as well as the fact that the grounds upon which *Bendik* relied were placed in serious question by *Speiser* v. *Randall*, *infra*, *Bendik* neither conflicts with nor can be dispositive of the present appeal.

was a permissible legislative classification. *Etcheverry* v. *United States*, 320 F. 2d 873 (9th Cir. 1963), cert. denied, —— U. S. —— (32 U. S. L. Week 3205, December 2, 1963). Like the trial judge below, *Bendik*, *Clark* and *George* held that the exemption for conscientious objectors was an act of legislative grace, and could hence be granted upon any condition which Congress desired to impose. We find it unnecessary to determine whether an exemption for some or all conscientious objectors is a constitutional necessity, or is merely dependent upon the will of Congress. See *Selective Draft Law Cases*, 245 U. S. 366 (1918); *Hamilton* v. *Regents*, 293 U. S. 245 (1934). Compare *School District of Abington Township* v. *Schempp*, 374 U. S. 203, 250-53 (1963) (concurring opinion of Brennan, *J.*). For it now seems well-established that legislative power to deny a particular privilege altogether does not imply an equivalent power to grant such a privilege on unconstitutional conditions. See *Speiser* v. *Randall*, 357 U. S. 513 (1958). It could hardly be argued, for example, that the ability of Congress to deny an exemption to all conscientious objectors would permit Congress to limit that exemption to objectors of one particular religious denomination. We are thus compelled to determine the constitutionality of the particular limitation involved, and to consider whether the requirement of a belief in a Supreme Being could be validly [fol. 54] employed to reject Seeger's claim to an exemption under existing constitutional doctrines.

IV

In *Everson* v. *Board of Education*, 330 U. S. 1 (1946), the Supreme Court offered what has perhaps become the most frequently quoted exposition of the significance of the "establishment clause." In the words of the Court, " 'the establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing

religious beliefs or disbeliefs, for church attendance or non-attendance * * * In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'"

But, if the Supreme Court has been steadfast in its insistence that government refrain from "aiding" one religion or all religions, *School District of Abington Township* v. *Schempp*, 374 U. S. 203 (1963); *Engle* v. *Vitale*, 370 U. S. 421 (1962); *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203 (1948), it has been equally vigilant in rejecting any reading of the First Amendment which might dictate a policy of governmental hostility to religion or religious beliefs. *Zorach* v. *Clauson*, 343 U. S. 306 (1952); *Everson* v. *Board of Education, supra.* The Constitution "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary." *Everson* v. *Board of Education*, 330 U. S. at 18. Indeed, one member of the [fol. 55] Court has recently cautioned against a rigid interpretation of the establishment clause for fear of treading upon the individual citizen's right to the free exercise of his religion, a privilege equally basic to the First Amendment. *School District of Abington Township* v. *Schempp*, 374 U. S. at 247 (concurring opinion of Brennan, *J.*). And the "free exercise" clause has been interpreted so as to require government to afford private citizens the utmost freedom to remain true to their religious faith, and to observe the practices sacred to their religion, except when such conduct would impinge upon the equal rights of others, or would interfere with an overriding social objective. See *Sherbert* v. *Verner*, 374 U. S. 398 (1963); cf. *Braunfeld* v. *Brown*, 366 U. S. 599 (1961).

Although stopping short of an argument that the First Amendment compels an exemption for those whose religions prohibit participation in war, the government invokes just such a view of the "free exercise" clause to support the legislative classification challenged in the present case. In essence, the government appears to argue that the spirit of the "free exercise" clause is satisfied when religious objectors are permitted to avoid a course of conduct which their religion condemns. Stated in other words, the government's argument is that Congress was merely

seeking to give the greatest possible latitude to the free exercise of religion when it enacted the conscientious objector provisions; since the Constitution does not require that a similar freedom be afforded the exercise of non-religious beliefs, it is reasonable to distinguish between them.

It is, of course, vital to such a line of reasoning that "religion" and "religious" be properly defined. "A statute could scarcely be defended * * * if it protected the 'free exercise' of only a few favored religions or preferred some religions over others without reasonable basis for doing [fol. 56] so." *United States* v. *Jakobson*, —— F. 2d —— (2d Cir. 1963). In this regard, the government attempts to justify the "Supreme Being" definition by asserting the propriety of a distinction between beliefs which are solely the result of individual reflection and those which the believer assumes to be the product of divine commands. Congress would be justified, or so is argued, in refusing to defer to those individuals who merely invoke their own fallible judgment in opposition to that of the legislature; it would be less so with respect to those whose refusal to serve is based upon obedience to a power higher than that exercised by a mortal Congress.

But while we find this argument persuasive, we are unable to consider it dispositive of the case before us. For we feel compelled to recognize that a requirement of belief in a Supreme Being, no matter how broadly defined, cannot embrace all those faiths which can validly claim to be called "religious." Thus it has been noted that, among other well-established religious sects, Buddhism, Taoism, Ethical Culture and Secular Humanism do not teach a belief in the existence of a Supreme Being. *Torcaso* v. *Watkins*, 367 U. S. 488, 495 n. 11 (1961). Indeed, our country has long prided itself on the enormous diversity of religious beliefs which have been able to find acceptance and toleration on these shores. In this regard, Mr. Justice Brennan has recently explained the development of judicial attitudes towards the First Amendment, by observing that "our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial

minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all." *School District of* [fol. 57] *Abington Township* v. *Schempp*, 374 U. S. 203, 240 (1963) (concurring opinion). In the face of this vast conglomeration of differing ideas and ideals, it is not surprising that no single concept may be found which is common to all.

In *Torcaso* v. *Watkins*, 367 U. S. 488 (1961), the Supreme Court struck down as invalid a state statute requiring notaries public to affirm their belief in the existence of God. Although referring to the evils historically attendant upon the requirement of a religious oath for public office, the Court was careful to place its decision on far broader grounds. Government could not, the *Torcaso* court declared, place the power and authority of the state "on the side of one particular sort of believers—those who are willing to say that they believe in 'the existence of God.'" Belief in a Deity was, for the Court, "a belief in some particular kind of religious concept." And the requirement that candidates for office affirm their devotion to such a concept was, the court held, beyond the constitutional powers of the state.

In a very real sense, the decision in *Kauten* was the precursor of *Torcaso*. For in *Kauten's* broad definition was embraced the recognition that "'religion" could not be confined to a belief in a supernatural power; that today, a pervading commitment to a moral ideal is for many the equivalent of what was historically considered the response to divine commands. The *Kauten* test represents an acknowledgment that for many in today's "skeptical generation," just as for Daniel Seeger, the stern and moral voice of conscience occupies that hallowed place in the hearts and minds of men which was traditionally reserved for the commandments of God. It is in this respect that *Kauten* has found its way into the pages of the United States Reports, generally accompanied by a recognition of the impropriety inherent in a governmental determination of what [fol. 58] is a "true" or "acceptable" religious belief. See *Saia* v. *New York*, 334 U. S. 558, 564 (1948) (dissenting opinion of Frankfurter, *J.*); *West Virginia State Board of*

Education v. *Barnette, supra,* at 659. Cf. *United States* v. *Ballard,* 322 U. S. 78 (1944).

And if a distinction between internally derived and externally compelled beliefs raises serious theoretical problems, the practical difficulties which it engenders are no less perplexing. When Daniel Andrew Seeger insists that he is obeying the dictates of his conscience or the imperatives of an absolute morality, it would seem impossible to say with assurance that he is not bowing to "external commands" in virtually the same sense as is the objector who defers to the will of a supernatural power. Indeed, we would create an impossible task for draft boards and courts alike were we to insist upon a distinction between Arno Sascha Jakobson's devotion to a mystical force of "Godness" and Daniel Andrew Seeger's compulsion to follow the paths of "goodness."[3]

It is to be emphasized once again that there is no question in this case, as there was in *Jakobson,* as to the sincerity of Seeger's beliefs or the tenacity with which they are held. With commendable candor, the government has fully conceded that Seeger's views fall squarely within the definition of "religion" announced for this Circuit in *Kauten,* and subsequently reaffirmed in *Phillips* and *Reel.* [fol. 59] While we are, therefore, most reluctant to find that Congress, in a sincere attempt to balance the personal rights of a minority with the insistent demands of our national security, has transgressed the limits imposed by the Constitution, we are compelled so to hold. This is not

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[3] The government has argued that the "Supreme Being" standard may be justified as implifying the task of the draft boards by providing an objective standard for the determination of sincerity and religious belief. In light of *Jakobson's* expanded definition of "Supreme Being," the test would hardly be free from complexities. In any event, "government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that nonreligious means will not suffice." *School District of Abington Township* v. *Schempp,* 374 U. S. 203, 265 (1963) (concurring opinion of Brennan, *J.*).

to deprecate the enormity of the congressional burden; we fully appreciate the duty and powers of Congress to ensure peace and stability in these unstable times by recruiting citizens for the armed forces. We further recognize the concern for personal liberties and religious freedom which led to the enactment of the conscientious objector exemption in the face of the perils which confront us throughout the world. At the same time, however, we cannot conclude that specific religious concepts, even if shared by the overwhelming majority of the country's organized religions, may be selected so as to discriminate against the holders of equally sincere religious beliefs. Especially when considered in the light of *Torcaso* and the still more recent teachings of the Supreme Court, a line such as is drawn by the "Supreme Being" requirement between different forms of religious expression cannot be permitted to stand consistently with the due process clause of the Fifth Amendment. We are convinced that the believer in a Supreme Being is not for that reason alone more entitled to have his conscience respected by a draft board than is Daniel Seeger. In the words of Madison's historic Remonstrance, recently cited by the Supreme Court in *Engle* v. *Vitale*, 370 U. S. 412, 421 (1962), "religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate."

We wish to make clear, moreover, that by holding the "Supreme Being" requirement to create an impermissible classification under the circumstances present here, we are not pasing upon the validity of legislative classifications [fol. 60] in terms of religion in any other context.[4] As an

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[4] It is not inappropriate to note, however, that two courts recently confronted with statutes providing tax exemptions for "religious" organizations interpreted "religion" so as to include groups possessing no theistic beliefs, expressly to avoid constitutional difficulties. *Fellowship of Humanity* v. *County of Alameda*, 315 P. 2d 394 (Cal. App. 1957); *Washington Ethical Society* v. *District of Columbia*, 249 F. 2d 127 (D. C. Cir. 1957). See also 58 Colum. L. Rev. 417 (1958).

observer has recently noted, "to characterize constitutional limitations as inflexible imperatives is an unproductive form of judicial activity." Pollak, Foreword: Public Prayers in Public Schools, The Supreme Court—1962 Term, 77 Harv. L. Rev. 62, 67 (1963). We feel it the soundest course to deal with such problems as they are presented to us, and not to lay down hard and fast rules which may be inappropriate to some of the many and varied interactions between government and religion.

In *Zorach* v. *Clauson*, 343 U. S. 306, 313 (1952), the Supreme Court acknowledged that "we are a religious people whose institutions presuppose a Supreme Being." Our disposition of this appeal is in keeping with this declaration. It has often been noted that the principal distinction between the free world and the Marxist nations is traceable to democracy's concern for the rights of the individual citizen, as opposed to the collective mass of society. And this dedication to the freedom of the individual of which our Bill of Rights is the most eloquent expression, is in large measure the result of the nation's religious heritage. Indeed, we here respect the right of Daniel Seeger to believe what he will largely *because* of the conviction that every individual is a child of God; and that Man, created in the image of his Maker, is endowed for that reason with human dignity.

Judgment reversed.

[fol. 61] IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge, Hon. Irving R. Kaufman, Hon. Paul R. Hays, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

DANIEL ANDREW SEEGER, Defendant-Appellant.

JUDGMENT—January 20, 1964

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed.

A. Daniel Fusaro, Clerk.

[fols. 62-75] [File endorsement omitted].

[fol. 76] Clerk's Certificate to foregoing transcription omitted in printing.

[fol. 77] In the United States District Court, Southern District of New York

62 Cr. 1003

United States of America, Plaintiff,

vs.

Daniel Andrew Seeger, Defendant.

Transcript of hearing—March 26, 1963

Before: Hon. Richard H. Levet, District Judge.

New York, New York.

Appearances:

Robert M. Morgenthau, Esq., United States Attorney,
Ezra Friedman, Esq., Asst. U. S. Attorney.
Kenneth W. Grennawalt, Esq., Attorney for Defendant.

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[fol. 78] Motion to Dismiss Indictments and Discussion Thereon

Mr. Greenawalt: I do make a motion to dismiss the indictment on the ground it has not been proved beyond a reasonable doubt. Would your Honor like to have the legal basis for my motion at this time, as well as the factual basis? What Mr. Friedman and I were talking about yesterday is this——

The Court: Or you may reserve until after the defense is put in, if there is to be proof.

Mr. Greenawalt: What I was going to say is that we were hoping the Court might reserve decision on this motion.

The Court: I will.

Mr. Greenawalt: For this reason: That Mr. Seeger has been endeavoring for some time now to get expert witnesses to testify for him.

The Court: On what?

Mr. Greenawalt: To make it even more apparent than it is from the papers that his position is based on a religious training and belief within at least the meaning of the draft act, except in so far as that may involve a belief in the Supreme Being. In other words, as I read to you, the Justice Department in their memorandum did not say that Mr. Seeger's objection was based upon essentially political, [fol. 79] sociological or philosophical views, or a merely personal moral code.

The Court: Aren't we beyond that?

Mr. Greenawalt: No.

The Court: In view of the ultimate disposition of the matter?

Mr. Greenawalt: Well, the point is this: If I understand Mr. Friedman's position, and he said it to me yesterday, he says it also in his brief, I do not accept this as a complete position, but at least as I understand his position it is that the conscientious objection position which has been espoused by the registrant in this case would have sufficed for exemption under the Act as it existed in 1940—that is the cases we referred to—but his point is since then there has been an amendment to the Act which closes that door. My position is not only partly that, I would agree with the government under the 1940 Act, that under these cases Mr. Seeger would have been exempted, clearly exempted, as a conscientious objector based on religious training, and so on.

I go one step further, however, I say since these cases were decided, and since the Act was amended, and since [fol. 80] the cases which he relies upon have since been decided and held that you have to have a belief in a Supreme Being before you can take advantage of the religious training clause—in other words, a religious training and belief clause has to be based upon a Supreme Being, belief in a Supreme Being—and unless you have belief in a Supreme Being then there is no religious training or belief under which you can be exempt under the present draft act.

If that is their position, and it is clearly understood that is the point the government denied him an exemption on,

there is no point for further testimony, because this testimony would have been along those lines.

We had one professor lined up, and he has taken a trip and won't be back for several weeks, a very distinguished theologian. His testimony would have been that Seeger's statement as set forth in these papers is that of a person who has a religious training and belief, and it is not merely a philosophical or political or sociological or moral basis, it is religious, but it isn't a religion which is based upon a belief in a Supreme Being.

Now, under the definitions of religion which have oc- [fol. 81] curred in the Kauten, Downer and Badt cases, there is absolutely no question about that.

The Court: Unfortunately for your defendant we are not operating under that statute. I will reserve decision on your motion.

Now, proceed with your proof.

Mr. Greenawalt: The question is this: If the government takes the position, as I understand it, that we are not to put in any further proof in this case at all—he says that he will object to any proof we put in.

The Court: I have not heard the tender of any proof, and I, hence, am not ruling on it until there is either proof or a tender of it.

Mr. Greenawalt: I am not in a position today, and I explained this to the government, because I need certain expert witnesses for the reasons I indicated.

The Court: I cannot very well hold this case up for weeks and weeks in order for somebody to come back from a long, long trip.

Mr. Greenawalt: I don't think we need to do that.

The Court: You either have to fish or cut bait.

[fol. 82] Mr. Greenawalt: I don't think we need do that, but we didn't know until this past week this man was away, late last week we learned it, and we are trying now to get other people.

The Court: If you want to tender some proof, I will listen to the tender, and if there is an objection I will have to rule on the tender, if you want to do that.

Mr. Greenawalt: Our proof would be similar—I might say, your Honor, that our proof would be similar to that

presented in the Horst case. I don't know whether you are familiar with that citation.

The Court: I don't know which one you have in mind.

Mr. Greenawalt: United States of America against Peter Scott Horst.

The Court: What is the citation?

Mr. Greenawalt: Do you know the citation, Mr. Friedman?

Mr. Friedman: I am afraid I don't, no.

Mr. Greenawalt: I have the opinion here, but I don't have the citation.

Mr. Friedman: This is an unreported decision, your Honor, in the Eastern District of Michigan in 1958, I [fol. 83] believe.

The Court: I don't know it.

Mr. Friedman: I have a copy of the transcript, which is not very clear, and can't be reproduced, but I will tender it to your Honor, unless Mr. Greenawalt has a copy.

Mr. Greenawalt: Yes, I have a copy. But, your Honor, it is hard to phrase a tender when you don't know what precisely the witness is going to testify. But I can say this, the tender is this——

The Court: I don't know what you are going to do then.

Mr. Greenawalt: The tender is this: These people who are experts in religion would testify, as they did in the Horst case, that religion is not confined to a belief—that religious belief is not one confined to a belief in a Supreme Being, that religion has a far greater breadth than merely a belief in a Divine Being, and that there are various definitions and concepts of religion which are real concepts of religion which do not involve necessarily a belief in a Divine Being, and if they were called upon to testify here they would say that Daniel Seeger's the registrant's, views [fol. 84] as set forth in his papers constitute a religious belief, and that his conscientious objection is, basically, that of a religious person, although it is not based on a belief in a Supreme Being.

In that connection, there have been two recent cases which I think your Honor should know about, which would be set forth in our brief. One of them is the case of Fellowship of Humanity against County of Alameda, which was decided in District Court of Appeal in California. I will

give you the citation on that. The one I have in my hand is 315 Pacific Reporter 2d, at 394. There is another case——

The Court: That is a state decision, is it not?

Mr. Greenawalt: That's right.

The Court: Is it on a draft case?

Mr. Greenawalt: No, it is not. And there is another case which has been relatively recently decided, I think it is in the District Court in Washington. It is the Washington Ethical Society against the District of Columbia. That is at 249 Fed. 2d 127, 1957.

In these two cases—I am sorry to get away a little bit from our point of evidence, but I am trying to give you [fol. 85] the idea of what these witnesses would testify to if they were called.

In these two cases, which are very recent, and which in turn, I may say, reflect reasoning which was adopted by the United States Supreme Court in the Torcaso case, that under the First Amendment you cannot distinguish between a religion that is based upon a Supreme Being and on which is not based on a Supreme Being. In other words, you cannot distinguish or aid one religion as against all religions or as against no religion.

I am frank to say that those two cases arose under the tax statutes, and when the case came up regarding these two bodies as to whether or not they were religious, in those two cases there is a compilation—if I may say so a very good one in the California case—of all the recent authorities up to that date on the definition of religion, and they include the definitions which your Honor has referred to where religion is defined as a belief in a Supreme Being. It also includes the many definitions in court cases or otherwise where a religious belief is said not to be so restricted, and includes other types of beliefs besides that of a Supreme Being.

[fol. 86] That is the only point of this testimony. As I understand Mr. Friedman's position, it is that no matter what is said in the course of any testimony offered now by experts it would not change the material which is in these papers. I think there is a difference of opinion between district courts on this subject, and I understand some courts have taken the position that the registrant cannot offer any testimony either to explain his record in the

Selective Service process or to call experts to explain his position.

The Court: These experts that you would contemplate calling would merely testify that his position was based upon religious training and belief, but would not be able, of course, I assume, to testify that it has anything to do with the individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation. Is that so, in substance?

Mr. Greenawalt: I think that is substantially correct, your Honor. In other words, his religious belief is not based on a supernatural person or a Supreme Being known as God.

The Court: What is your position, Mr. Friedman, with respect to proper proof?

[fol. 87] Mr. Friedman: First of all, as to the propriety of bringing in witnesses and going outside the Selective Service file itself, I think that in a matter such as this, and for the purpose for which the evidence is offered, that it would be proper, generally speaking, for such a tender to be made and for the evidence to be accepted. And that is because one of the Court's functions and problems here is to try to ascertain Congressional intent. Congress using language, using words, what do these words mean?

The Court: Are you willing to stipulate if So-and-So were called he would testify to the effect that I have just attempted to suggest?

Mr. Friedman: I don't go quite as far as Mr. Greenawalt. I feel that a witness, if called, would undoubtedly testify the views expressed by Mr. Seeger in his various documentations and appearances before the Board could be considered to be a religious position on a somewhat broader definition of religion.

I feel, however, that this is clearly not sufficient under the 6 (j) section as it now stands.

The Court: Whether it is sufficient or not, if you want [fol. 88] to bridge this impasse, you may consider stipulating that if he were called he would so testify, without conceding that that is sufficient to create any exemption.

Mr. Friedman: And I would like to point out one possible pitfall to the Court, and this is really where Mr. Greenawalt and I why we were unable to come to an agreement,

and that is if that witness were to so testify, what the effect would have been under the prior statute, I feel very strongly, as I stated in my brief, that had this case arisen in the second circuit under the 1940 Act, where only the first sentence of what is now 6 (j) appeared, Mr. Seeger would have been successful in obtaining his claim. However, even without the specific definition added in 1948 by Congress, he would not have been successful in the ninth circuit, and what I am not prepared to concede is that Congress necessarily intended under the first sentence a broad definition of religion which would cover Mr. Seeger and which was whittled away in 1948. Since the Supreme Court has never resolved the controversy between the ninth and the second circuits, we do not know what the prior law was, and since a constitutional argument is being made to your Honor, [fol. 89] and assuming that your Honor is prepared to follow along with the defense line of reasoning, one of his first questions is going to be: Is this "Supreme Being" a definition which has been added by the 1948 Act, and which defendant practically agrees forecloses him from the exemption—is that unconstitutional?

Let us assume it is unconstitutional. Where do we go from there, if we can strike that section out of the clause? We revert to the 1940 Act. And what did the 1940 Act mean? Was the second circuit correct that religion was to be taken in the three cases that developed that line—Kauten, Downer and Badt—or was the ninth circuit correct that even without those words that was the meaning actually in the statute?

The Court: If I conclude the interjection of this second sentence is unconstitutional, that leaves the Act in substance the way it was before, doesn't it?

Mr. Friedman: It leaves it literally exactly what it was before, and then the question is: What did Congress mean at that time?

The Court: Then the Court has to be guided by the deci- [fol. 90] sions in this circuit. Therefore, I have no problem, if I so decide.

Mr. Friedman: Then I would argue further as follows. I would argue that when they adopted the adding of the definition in 1948, they were merely making clear what they

meant under the 1940 Act. Defense counsel would argue the other way, that the Act was correctly interpreted by the second circuit.

The Court: I am concerned at this juncture with the completion of any factual presentation. You will either have to agree to stipulate so and so, or you may refuse, if you care to do so.

Mr. Friedman: I have offered—and I don't know whether we are closer to agreement—that were expert witnesses to be called they would testify that the claim made by the defendant would have ben sufficient to meet the tests laid down by the second circuit court decision in the series of three cases previously cited. That is to say, thaf religion is broad enough to embrace a coherent, deeply felt humanitarian, ethical, thoroughgoing abhorrence of war without a belief in a Supreme Being or super or supra-natural consequences.

The Court: Is that sufficient for your ends, Mr. Greenawalt?

[fol. 91] Mr. Greenawalt: He put in a couple of words I am not sure about—humanitarian, is that what he said?

Mr. Friedman: That's correct. I think those words are found in those decisions. In other words, what the second circuit court said was that when a man is not resisting service because of some political view—he is a Nazi, he doesn't want to fight against Nazi Germany—or an economic view—he is a socialist, or a communist, and is not going to participate in a capitalist war—that this is not sufficient, but that where a man has a deep abhorrence of all war as ethically wrong, and he is responding to the voice of conscience that, according to the second circuit, this is what Congress meant to exempt, I feel that this is essentially what the defendant's position is. I do not think there is really any controversy between us at this point.

The Court: Do you want to take this stipulation?

Mr. Greenawalt: Your Honor, possibly we can get a little closer to this thing if we can say that the government might be willing, as he says, as I gathered in his brief he says, the conscientious position espoused by the registrant [fol. 92] would have been sustained under the 1940 Act, and then he cites the three second circuit decisions——

The Court: Do you want to stipulate to that? That is it, in substance, isn't it?

Mr. Friedman: That's correct, your Honor. There is some question in my mind as to whether the second circuit was correct. I personally feel that they were, that there is that one little loophole that perhaps the ninth circuit was properly interpreting the Congressional intent.

Mr. Greenawalt: Of course this brings us down to the definition of religion which is contained in the second circuit opinions, and——

The Court: What are you going to do with this stipulation? Let's not toss it around any more.

Mr. Friedman: I feel we are in agreement, and that I have met the stipulation.

Mr. Greenawalt: If I understand you—and this is where I hope we had reached this point—the government does not deny, as the attorney of the Justice Department did not deny, that Mr. Seeger's conscientious objection is based upon a religious belief. The only question is what kind of a religious belief is it based on? We admit it is not based [fol. 93] on a Supreme Being, but under the definitions of religion, under the three second circuit Court of Appeals' decisions mentioned, they would certainly come under the broad definition of religion based on that. If the government is willing to admit that, then we can go on.

The Court: Are you?

Mr. Friedman: I am willing to stipulate that the defendant's claims, as made in his Selective Service record, would have met the test laid down by the second circuit in the three decisions that the Congress intended a broad definition of religion, and that a response to the voice of conscience was a reaction to a religious impulse and met the test.

The Court: Under the old statute?

Mr. Friedman: As interpreted by the second circuit.

The Court: Do you want to take that stipulation? If so, please say so.

Mr. Greenawalt: I would like to take it without foreclosing me to a broader position, that, namely, under the present law Mr. Seeger's position would also include definitions of religion which have been stated more recently.

[fol. 94] The Court: I am afraid you will have to take it as it is. That does not preclude you from moving to dismiss this indictment on the ground that the second sentence of 456 (j) is unconstitutional, as I see it.

Mr. Greenawalt: That's right.

The Court: Well, take it or leave it.

Mr. Greenawalt: If I understand—I want to get this clear, because it is a rather subtle point, I believe. Mr. Friedman is willing to stipulate that——

The Court: Off the record.

(Discussion off the record.)

The Court: We will take a recess.

(Recess.)

The Court: Have you come to an agreement?

Mr. Friedman: We have reached an agreement, your Honor.

The Court: Will you read the stipulation?

Mr. Greenawalt: This is a little rough, but we will try to get it slowly.

Defendant's witnesses, if called—and I might say, parenthetically, the witnesses would be theological seminarians—would testify that defendant's beliefs and views, as set forth in the record which constitutes Government's Ex-[fol. 95] hibits 1-61, as the grounds on which he claimed exemption under Section 456 (j) of the Selective Service Act are religious and arise from religious training and belief by reason of which defendant is conscientiously opposed to participation in war within the definitions of religion as set forth in the cases of United States against Kauten, 133 Fed. 2d 703; United States ex rel Phillips v. Downer, 135 Fed. 2d 521, and United States ex rel Reel v. Badt, 141 Fed. 2d 845.

The Court: Is that stipulated by the government?

Mr. Friedman: That is stipulated by the government.

The Court: And the defendant's counsel?

Mr. Greenawalt: Yes, it is.

I want to state this now, that this does not—Mr. Friedman and I understand this does not preclude the defendant from arguing or contending that on the basis of his record that his religious views and beliefs might come within other

definitions of religion which have been stated in cases since these three cases. He is not stipulating that this was what [fol. 96] our witnesses would testify, but I am saying we don't want to be precluded from merely the definition which is contained in the Kauten case in so far as our argument is concerned.

The Court: There is no contention here by the defendant that the beliefs of the defendant coincide with the second sentence of Section 456 (j), is there?

Mr. Greenawalt: That's right, there is no contention that his belief is based on a Supreme Being. I am now addressing myself to a motion to dismiss.

The Court: You may address yourself to that if there is no further proof or proffer of proof, as I take it to be the case.

To clarify the issues, is there any claim of undue process in the adjudication below?

Mr. Greenawalt: You mean lack of due process?

The Court: Yes.

Mr. Greenawalt: I think not, your Honor, except that——

The Court: Except as to the result?

Mr. Greenawalt: No, no. No, I don't think we are raising —what you are talking about is procedural due process? [fol. 97] The Court: That is what I had in mind.

Mr. Greenawalt: So far as due process, along with the Fifth Amendment I don't agree with you, but under procedural due process I say there is no contention made by the defendant they did not do everything that should be done, except this. We do think part of this record should have been these two documents which I have mentioned.

The Court: You haven't offered them. I don't know what will happen.

Mr. Greenawalt: I can't get them. The government gave me blanks, and you will find the blanks are in the record.

Mr. Friedman: If your Honor please, the two blank dummy letters that are referred to are Government Exhibits 28 and 29. 28 and 29 are dummy letters which transmitted certain material back and forth between representatives of the Justice Department. They are not the documents, they do not pretend to be the documents, that Mr. Grennawalt is referring to. Mr. Greenawalt is referring to,

and it is conceded they do not appear in Government's Exhibits 1 through 60 in evidence, the hearing officer's report to the Department of Justice, and the Federal Bureau of [fol. 98] Investigation reports. It is the government's position that they are properly not a part of the record either before the Appeal Board or before this Court. This Court is reviewing the action of the Appeal Board, and should have before it and does have before it only the record that was before the Appeal Board.

The Court: Was there anythi g before the Appeal Board outside the resume of the FBI reports? That is, were the FBI reports before the Board?

Mr. Friedman: No, sir. That is all they got.

The Court: That seems to be enough then. We can eliminate any of these procedural problems, I take it.

Is there anythig further about the alleged unconstitutionality of this portion of the new section?

Mr. Greenawalt: May I comment about these two letters Mr. Friedman referred to? One of them says "FBI reports enclosed." And the other encloses a copy of "my letter to the Appeal Board for your information." This letter is the one that the hearing officer sent to the Justice Department with his recommendations of exemption status in this case, [fol. 99] and that is not part of the record. All we have is a blank on that.

As far as the FBI reports are concerned, there is attached to the Justice Department decision a resume of the FBI reports. But we do not have the FBI reports, and we do not have, and have never had, either one of these two documents. So, we don't have them here to offer in evidence.

Mr. Friedman may be right they are not properly a part of the record, but this is a matter of law, not a matter of fact.

Mr. Friedman: If your Honor pleases, the Corliss case in this circuit, United States against Corliss, 1960, and the Gonzales case in the Supreme Court, also 1960, I think are absolutely determinative of the issue that these are not properly before the Appeal Board and the regulations provide what documents should be before the Appeal Board. The FBI reports, and the hearing officer's report, are con-

sidered interdepartmental memoranda of the Department of Justice.

The Court: All right, as long as you know you face this you can supply me with authorities for the position you take.

[fol. 100] Now, is there anything else that has not been discussed other than the alleged unconstitutionality of this second sentence of 456 (j)?

Mr. Greenawalt: We are talking about my motion to dismiss?

The Court: Yes.

Mr. Greenawalt: Yes, your Honor. For the record now, I would like to state that this motion is also based on the unconstitutionality of Section 456 (j), which is the Universal Military Training and Selective Service Act, because it is in violation of the First Amendment of the United States Constitution, the religious clause, both inherently and as applied against the registrant in this case.

I also wish to move to dismiss on the ground that it is a violation of the Fifth Amendment of the United States Constitution, and also Article VI, Section 3, of the United States Constitution.

I also wish to point out the argument that we made before briefly, that we do not accept the point that this classification in the section referred to is constitutional. On the contrary, we take the position that the statutory classification has no reasonable relation to the legitimate purpose [fol. 101] of government and is discriminatory against people who do not have a religious belief based on a Divine Being or a Supreme Being.

In other words, we take the position that this classification in the Selective Service Act is unreasonable and arbitrary and in violation of the Fifth and First Amendments of the United States Constitution.

We also take the position that Seeger, on the basis of Seeger's papers alone, that he should have been entitled to exemtion under the Act. We feel that the hearing officer was correct in giving him exemption, and the Justice Department was wrong in denying him exemption.

This, of course, involves a definition of religious training and belief, and whether or not the definition which is contained in the Act itself can be accommodated to Mr.

Seeger's position as set forth in his papers. We realize that there is a difference of opinion in the record as to whether it can or can't, but we don't want to foreclose the argument at least that Seeger was entitled to exemption status under the present Act, quite apart from the prior Act, on the basis of the statement which he made in his papers.

[fol. 102] I think that is the essence.

The Court: All right, decision to dismiss is reserved.

Now, when will you submit your brief?

Mr. Greenawalt: Are we closing the whole case now, your Honor?

The Court: Of course:

* * * * * * *

[fol. 103] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 104]

GOVERNMENT'S EXHIBIT 3

SELECTIVE SERVICE SYSTEM

CLASSIFICATION QUESTIONNAIRE

50 66 35

3 38

SYSTEM
66

NOTICE TO REGISTRANT

INSTRUCTIONS

SELECTIVE SERVICE SYSTEM

CLASSIFICATION QUESTIONNAIRE

[illegible] 66 35

[illegible] 35

[illegible] SYSTEM.
66
[illegible]
N.Y.

NOTICE TO REGISTRANT

[illegible]

INSTRUCTIONS

[illegible]

[illegible] You are now o[illegible] with certificate attached to your [illegible] board.

[illegible] After this questionnaire has been returned to [illegible] your local board at once [illegible] only [illegible] which may affect your [illegible]

SSS Form No. 100 [illegible] (1)

[fol. 105] Statements in this questionnaire are confidential as prescribed in the Regulations

USE OF TYPEWRITER IN FILLING OUT THIS FORM

STATEMENTS OF THE REGISTRANT

IDENTIFICATION

(Complete all statements in this series.)

(Do not write in this space. Leave blank.)

NUMBER OF ARMED FORCES

(Type or print) Write a 1 if you are a member of one or more of the groups named in this series; if not a member of any of these groups, write a 2. Answer each item as indicated under the appropriate item or items.

Coast and Geodetic Survey,

the Army of the United States; Not on ACTIVE DUTY as a

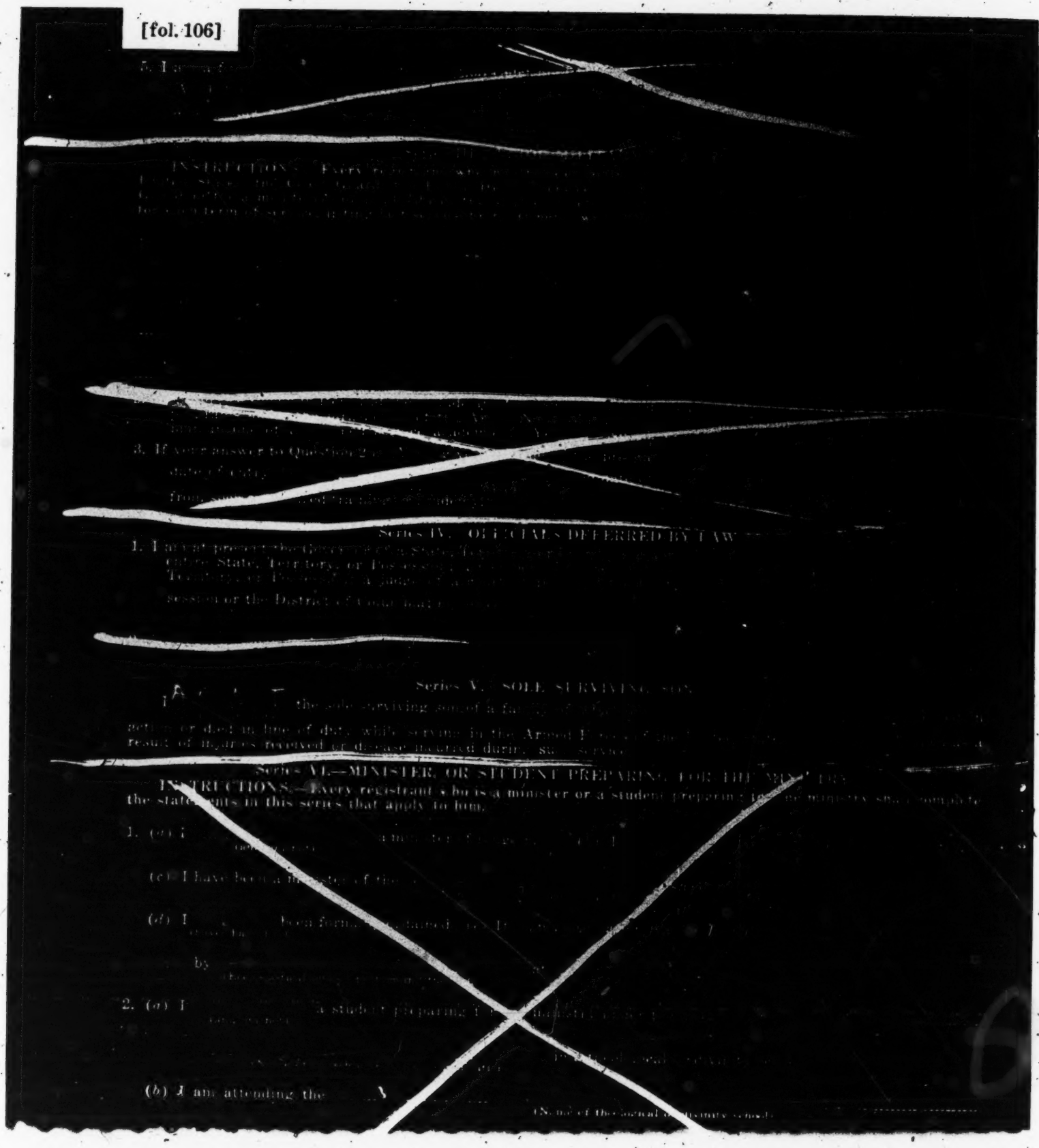
(Date)

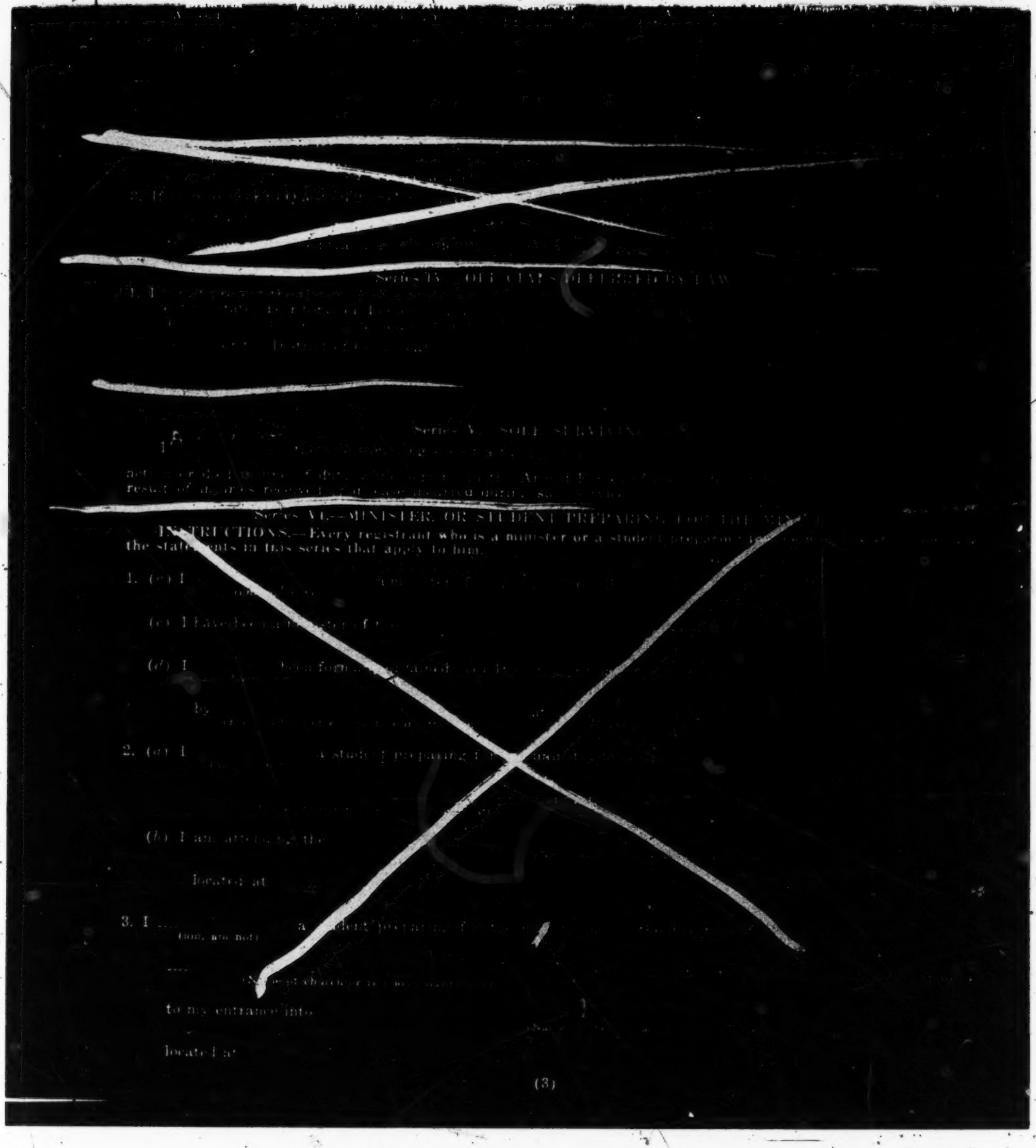
(Name of unit) by satisfactorily participating in such training as prescribed by the Secretary of Defense.

a member of the appropriate unit enrolled in the advanced course, senior division, Reserve Officers' Training Corps ☐; a member of the Air Reserve Officers' Training Corps ☐; a member of the Naval Reserve Officers' Training Corps entered upon the junior or senior year ☐; a midshipman, United States Naval Reserve ☐; in the

56

[fol. 106]





(3)

[fol. 107]

dependent uses no for

the box and on to check this qu

upon

SECTION VIII. PRESENT OCCUPATION

Check the following boxes appropriate to his case and follow the instructions

If this box is checked, complete Section XI.

draftsman, turret lathe operator,

practical nurse, etc.),

brief statement of your duties)

completion of

to continue bulletin 61, is it.

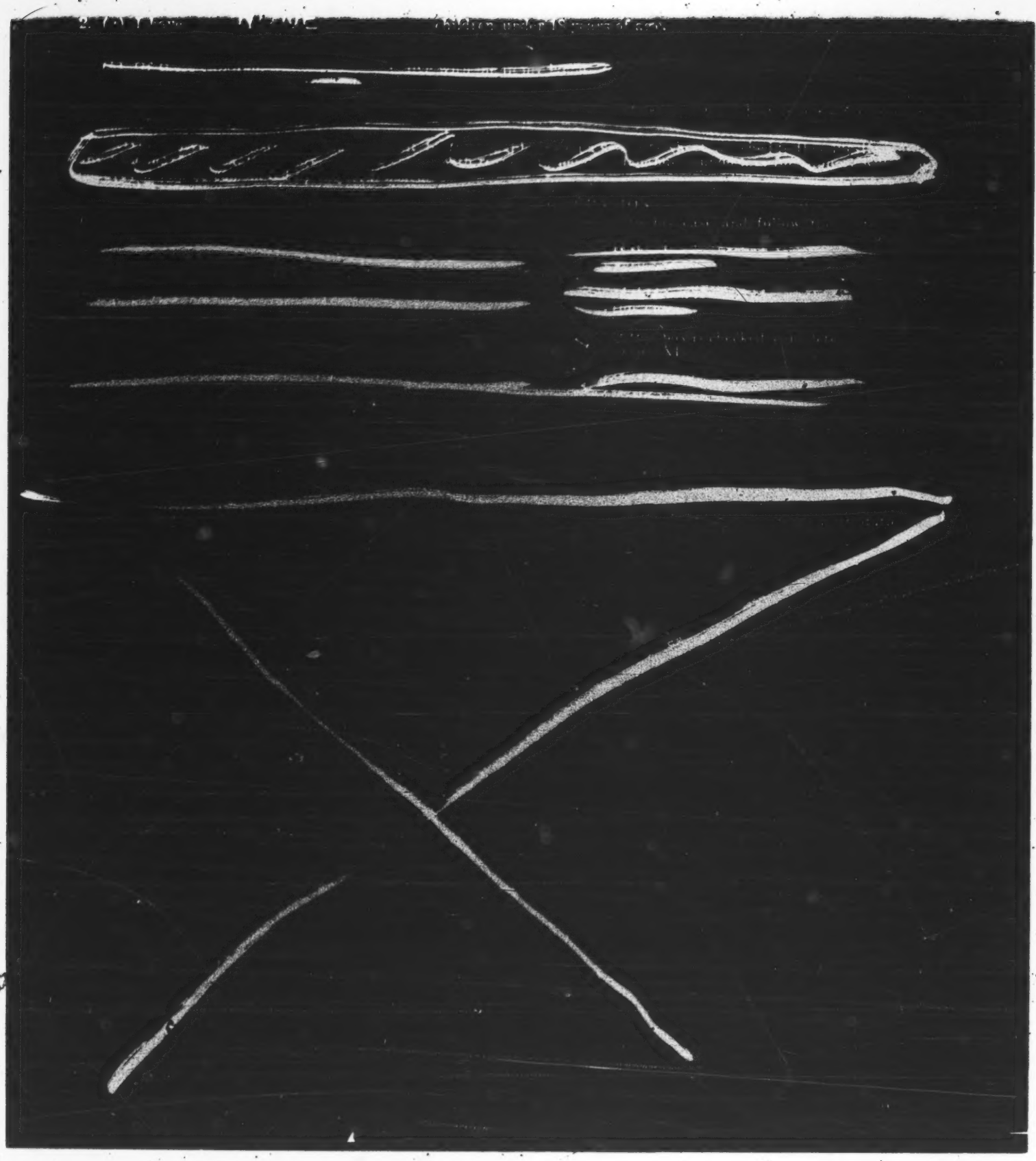
will be about

date)

date)

not hiring any help

write "Self" if self-employed)



[fol. 108]

SERIES IX.—AGRICULTURAL OCCUPATIONS

INSTRUCTIONS.—Every registrant who works on a farm, on ranch, or ranch land occupied

1. I [illegible]

(a) [illegible]

(b) [illegible]

(c) [illegible]

(d) [illegible]

(e) [illegible] teams

(f) [illegible] hand (Be [illegible])

(g) Unpaid family [illegible]

2. I have been engaged in farm work [illegible]

4. I [illegible] and per cent [illegible]

5. The [illegible] of the farm I operate

6. [illegible] If [illegible] farm [illegible]

7. [illegible] worked [illegible]

8. The [illegible] year round [illegible] on the farm is [illegible]

9. I am paid at the rate of [illegible] per hour [illegible]

10. Other facts which I consider necessary to present fairly the fa[illegible] I have [illegible] connection with it [illegible] a ground for classification are (if none, write "None") [illegible]

the local board should consider in determining your classification.

Series IX.—AGRICULTURAL OCCUPATION

INSTRUCTIONS.—Every registrant who works on a farm, or on a

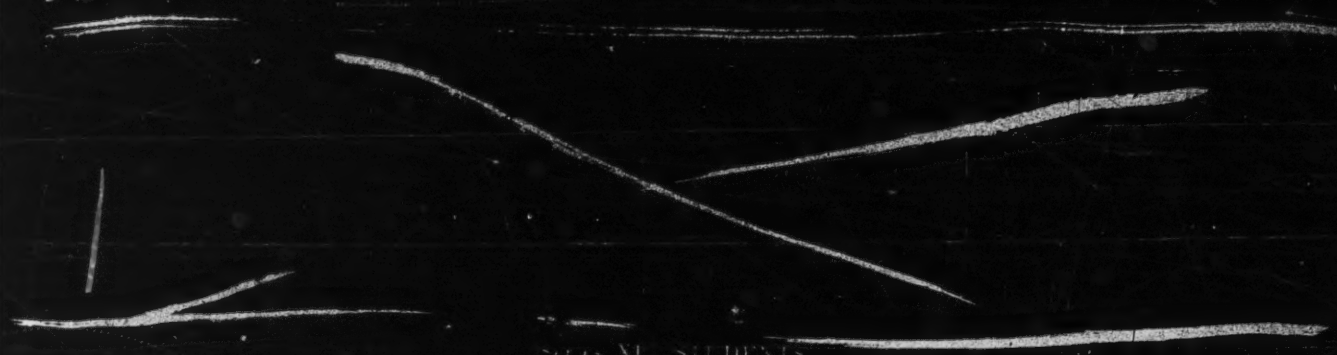
the local board should consider in determining your classification.

[feb 109]

Series X - EDUCATION

1. I [illegible]

2. [illegible]



Series XI - STUDENTS

INSTRUCTIONS.—Every registrant who is a full-time high school or college student, except those who have completed [illegible] shall complete this series. A student who believes that he should be placed in a deferred class [illegible] student status should file with the local board the necessary supporting evidence.

1. (a) I [illegible] at present [illegible]

located at [illegible]

(Number, street, and city)

(Name of school)

(b) I [illegible] (Name of school) (If none, write "None") on (Date)

Series XII - CITIZENSHIP

INSTRUCTIONS.—(1) Every registrant shall complete the statements numbered 1 and 2 in this series.

1. I [illegible] on

(Name of registrant) (Date)

2. I [illegible] subject of [illegible]

INSTRUCTIONS.—(2) Every registrant who is not a citizen of the United States shall also complete the statements numbered 3, 4, and 5 when applicable.

3. [illegible]

4. I [illegible] Declaration of Intention to be [illegible] of the United States.

5. I [illegible] Index No.

Series XIII - COURT RECORD

INSTRUCTIONS.—Every registrant shall complete this series.

1. I [illegible] other than minor traffic violations, as recorded below. If none, write "None."

Offense	Date of Conviction (Month and Year)	Court (Name and Location)	Sentence
(Last conviction)			

Series XII.—CITIZENSHIP

INSTRUCTIONS.—(1) Every registrant shall complete the statements numbered 1 and 2 in this series.

1. I ... on ...
(Date)

2. I ...

(2) Every registrant who is not a citizen of the United States shall also complete the statements numbered 3, 4, and 5, when applicable.

3. My ...

4. I ... a Declaration ... of the United States.

5. I ... under No. ...

Series XIII.—COURT RECORD

INSTRUCTIONS.—Every registrant shall complete this series.

1. I ... other traffic violations, as recorded below; if none, write "None."

Name of Institution	Sentence

2. I ... now ... retained by the custody ... of criminal jurisdiction, or other civil authority ...

[fol. 110]

SERIES XV. PHYSICAL CONDITION

INSTRUCTIONS. Every registrant shall complete this series. Answer each question listed below by "Yes" and when [illegible] attach an affidavit from his physician, hospital, or sanatorium to support his claim.

1. Do you now [illegible]

Answer: Yes [illegible] No [illegible]

2. If your answer to Question 1 is "Yes," state the [illegible]

3. Are you [illegible]

4. Are you now, or have you ever been [illegible]

No [illegible]

5. If your answer to Question 4 is "Yes," state the [illegible]

6. Have you ever received treatment [illegible]

7. If your answer to Question 6 is "Yes," state [illegible]

of the physician who attended you and [illegible]

J

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

INSTRUCTIONS. It is optional with registrant whether or not he completes this series. His answer shall not constitute a waiver of claim to deferred or other status. The facts set forth in his answer will be considered by the local board in determining the classification of the registrant on the basis of the facts before it, which will be [illegible] sidered [illegible] regardless of whether or not this statement is completed.

In the space below [illegible] the facts set forth in [illegible] which [illegible]

The registrant may write in the space below or attach to this page [illegible] which he would bring to the attention of the local board in determining his classification.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS. 1. Every registrant shall make the registrant's certificate. 2. If the registrant's [illegible] read the questions and his answers thereto shall be read to him by the person who [illegible] question [illegible] 3. If the registrant is unable to write his name he shall make his mark and [illegible] his stead in the presence of two persons who shall sign as witnesses.

NOTE: [illegible] imprisonment for not more than five years or a fine of not more than $10,000, or both, and [illegible] and imprisonment, as provided by law as a penalty for knowingly [illegible] a party to [illegible] false statement or certificate regarding or [illegible] upon a classification [illegible]

I [illegible]

attach an affidavit from his physician, hospital, or sana[illegible]

which, in your opinion, will disqualify [illegible] for [illegible]

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

INSTRUCTIONS. It is optional with registrant whether or not he completes this statement. [illegible] answer will not constitute a waiver of claim to deferred or other status. The local board is charged [illegible] determination of the classification of the registrant on the basis of the facts before it, which will be taken into consideration regardless of whether or not this statement is completed.

[illegible] the facts set forth in this questionnaire [illegible]

The registrant may write in the space below or attach to this page any additional statement which [illegible] to the attention of the local board in determining his classification.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS. 1. Every registrant shall make the registrant's certificate. 2. If the registrant [illegible] read the questions and his answers thereto shall be read to him by the person who [illegible] question [illegible]. If the registrant is unable to sign his name he shall make his mark in the space [illegible] his statement in the presence of two persons who shall sign as witnesses.

[illegible] imprisonment for not more than five years or a fine of not more than $10,000, or both [illegible] and, except in time of war, is provided by law as a penalty for knowingly making or being a party to the making [illegible] false statement or certificate regarding or before upon a classification [illegible] Selective Service Act of 1948 as amended [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[fol. 111]

(Registrants Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board	Vote Yes	Vote No
OCT 27 1953	1-C	3	0
11-30-53	Form 110 MAILED * ALSO NOTICE TO REGISTRANT EXPLAINING 1S-C classification		
MAR - 8			
1-18-55	4-D ltr rec'd- 2nd yr.		
JUL 26 1955			
JUL 28 1955	FORM 110 (NOTICE OF CLASSIFICATION) MAILED		
7-29-55	Form 111 mailed to Queens College		
10/5/56	FORM 109 received from Queens Coll. student accepted for 3rd yr.		
[illegible]	2S (C-3)	3	0
OCT [illegible] 1956	FORM [illegible] NOTICE OF CLASSIFICATION) MAILED		
10/11/56	FORM 111 mailed to Queens College		
Feb. [illegible] 1957	Mailed letter re 109.		
Mar.18,1957	Registrant mailed in advice from school re FORM 109		
[illegible]	2S. 111	4	0
APR 4 1957	FORM 110 (NOTICE OF CLASSIFICATION) MAILED		
Apr.11,1957	FORM 111 mailed to Queens College		
7-15-57	Letter rec'd from reg. stating that he is conscientiously opposed "to participate in any violent military conflict, or in activities made in preparation for such an undertaking". SSS Form 150 (Special form for conscientious objector) mailed to reg.		
7-29-57	SSS Form 150 (Special form for conscientious objector) with statements from registrant attached received.		
AUG 6 1957	1-C	3-0	
AUG [illegible] 1957	(NOTICE OF CLASSIFICATION) [illegible]		

11/27/53	Notified of classification
11-30-53	Form 110 MAILED * ALSO NOTICE TO REGISTRANT EXPLAINING 1S-C classification
MAR 8	
JUL 26 1955	
JUL 28 1955	FORM 110 (NOTICE OF CLASSIFICATION) MAILED
7-29-55	Form 111 mailed to Queens College
10/5/56	FORM 109 received from Queens Coll. student accepted for 3rd yr.
OCT 10 1956	FORM 110 (NOTICE OF CLASSIFICATION) MAILED
10/11/56	FORM 111 mailed to Queens College
Feb. 26 1957	Mailed letter re 109.
Mar.18,1957	Registrant mailed in advice from school re FORM 109
APR 4 1957	FORM 110 (NOTICE OF CLASSIFICATION) MAILED
Apr.11,1957	FORM 111 mailed to Queens College
7-15-57	Letter rec'd from reg. stating that he is conscientiously opposed to participate in any violent military conflict, or in activities made in preparation for such an undertaking". SSS Form 150 (Special form for conscientious objector) mailed to reg.
7-29-57	SSS Form 150 (Special form for conscientious objector) with statements from registrant attached received.
AUG 6 1957	
AUG 9 1957	NOTICE OF CLASSIFICATION)
AUG 13 1957	Form 111mld to Queens, College
5-20-58	Rec'd change of address
	FORM 111 MAILED

16-85744-1 U. S. GOVERNMENT PRINTING OFFICE

[fol. 112]

SELECTIVE SERVICE SYSTEM—CLASSIFICATION QUESTIONNAIRE
MINUTES OF ACTION—CONTINUED

Dates	Minutes of Actions by Local Board, Appeal Board, and on Appeal to the President
Sep 22, 1958	Form 66 mailed.
Oct. 20, 1958	Registrant requests appointment. Appointment for 10-21-58.
11-5-58	DD Form 62 (Cert.of Acceptability) mailed - ACCEPTED
~~11-5-58~~	~~Cover sheet to forwarded on appeal~~
11-14-58	SSS-NYCity Form 54 mailed to reg.for completion
11-21-58	Letter rec'd from Flushing Hosp.re reg's physical conditon
11-25-58	Completed Form 54 rec'd
12-3-58	Papers forwarded to Induction Station as Papers Only case with letter from Flushing Hospital
1-2-59	Rec'd papers from Station - ACCEPTABLE - DD Form 62 mailed to reg.
1-2-59	Cover sheet forwarded to Appeal Board
3-16-59	Appeal Board Panel No. 2(EDNY) has reviewed file of subject registrant and has tentatively determined that he should not be classified in Class I-C or in a class lower than Class I-O, and is accordingly transmitting herewith, pursuant to the provisions of Section 1626.25 S.S.R., registrant's cover sheet to the U.S. Attorney for the Eastern District of New York, for the purpose of securing an advisory recommendation from the Department of Justice on registrant's conscientious objector claim.
10-23-59	Cover sheet returned to Appeal Board by Dept. of Justice.
10-23-59	Appeal Board Panel No. 2 (EDNY) mailed letter to registrant enclosing copy of Department of Justice recommendation and advising him of

Oct. 20, 1958	Registrant requests appointment. Appointment for 10-21-58.
11-5-58	DD Form 62 (Cert. of Acceptability) mailed - ACCEPTED
~~11-5-58~~	~~Cover sheet to forwarded to appeal~~
11-14-58	SSS-NYCity Form 54 mailed to reg. for completion
11-21-58	Letter rec'd from Flushing Hosp. re reg's physical conditon
11-25-58	Completed Form 54 rec'd
12-3-58	Papers forwarded to Induction Station as Papers Only case with letter from Flushing Hospital
1-2-59	Rec'd papers from Station - ACCEPTABLE - DD Form 62 mailed to reg.
1-2-59	Cover sheet forwarded to Appeal Board
3-16-59	Appeal Board Panel No. 2(EDNY) has reviewed file of subject registrant and has tentatively determined that he should not be classified in Class I-O or in a class lower than Class I-O, and is accordingly transmitting herewith, pursuant to the provisions of Section 1626.25 S.S.R., registrant's cover sheet to the U.S. Attorney for the Eastern District of New York, for the purpose of securing an advisory recommendation from the Department of Justice on registrant's conscientious objector claim.
10-23-59	Cover sheet returned to Appeal Board by Dept. of Justice.
10-23-59	Appeal Board Panel No. 2 (EDNY) mailed letter to registrant enclosing copy of Department of Justice recommendation and advising him of 30 day period in which he may file reply.
11-3-59	Letter returned undelivered by Post Office. Remailed to correct address.
12-3-59	Registrant delivered by hand, to the Appeal Board, his reply to the Department of Justice recommendation.
5-23-60	Cover sheet rec'd from Appeal Board - 1-A Vote 4-0

To be used to provide additional pages of SSS Form No. 100 when more space is required for recording Minutes of Actions by Local Board, Appeal Board, and on Appeal to the President.

16—70041-1 U. S. GOVERNMENT PRINTING OFFICE

SSS Form No. 100-S (Revised 10-11-54)

[fol. 113]

Dates	Minutes of Actions by Local Board, Appeal Board, and/or Appeal to the President
5-24-60	Letter to registrant advising SSR do not provide for interview or appearance before Appeal Board - request contained in reg's letter dated 11-2-59
5-24-60	SSS Form 110 (Notice of classification) mailed to registrant 1A - Vote 4-0
6-6-60	Rec'd letter from registrant advising he is appealing Appeal Board's decisio to both the State & National Directors; also advises of his marriage
6-10-60	Rec'd request from NYC Director for cover sheet for transmittal to National Hdqtrs. for review - Postponement of issuance of induction order authorized Cover sheet forwarded
8/31/60	Cover sheet rec'd - Classified 1-A on August 25, 1960 by Presidential Appeal Board 3 0
8/31/60	SSS Form 110(Notice of Classification) mailed to registrant
10/21/60	Rec'd copy of letter mailed by Induction Officer to US Attorney- registrant refused to submit to induction on 10/20/60
10/26/60	Papers rec'd from Induction Station with letter of transmittal - registrant reported for Induction on 10/20/60 and refused to be inducted
10/26/60	Cover sheet forwarded to NYC Hqtrs in accordance with LBM 14 Par. 9
12-1-60	Cover sheet return from NYC Hqtrs
12/1/60	Entered on SSS Form 302 Reported on SSS Form 301

6-6-60	Rec'd letter from registrant advising he is appealing Appeal Board's decis to both the State & National Directors; also advise of his marriage
6-10-60	Rec'd request from NYC Director for cover sheet for transmittal to National Hdqtrs. for review - Postponement of issuance of induction order authorized Cover sheet forwarded
8/31/60	Cover sheet rec'd - Classified 1-A on August 25, 1960 by Presidential Appeal Board 3 0.
8/31/60	SSS Form 110(Notice of Classification) mailed to registrant
10/21/60	Rec'd copy of letter mailed by Induction Officer to US Attorney- registrant refused to submit to induction on 10/20/60
10/25/60	Papers rec'd from Induction Station with letter of transmittal - registrant reported for Induction on 10/20/60 and refused to be inducted
10/25/60	Cover sheet forwarded to NYC Hqtrs in accordance with IBM 14 Par. 9
[illegible]	[illegible]
12/1/60	Entered on SSS Form 302 Reported on SSS Form 301

[fol. 115] GOVERNMENT'S EXHIBIT 11

170-36 Pidgeon [illegible]
Flushing 65, New York
July 12, 1957

Selective Service System
Local Board No. 66
39-01 Main Street
Flushing, New York

Gentlemen:

As the result of the resolution of a number of problems of conscience with which I have been preoccupied for the past months, I am bound to declare myself unwilling to participate in any violent military conflict, or in activities made in preparation for such an undertaking.

My decision arises from what I believe to be considerations of validity from the standpoint of the welfare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain. I have concluded that war, from the practical standpoint, is futile and self-defeating, and that from the more important moral standpoint, it is unethical.

The contention that war is futile needs little explanation, I suspect, since it is quite generally acknowledged. The ethical considerations may not be so obvious, but I have chosen not to undertake to explain them in this preliminary letter as the argument is somewhat lengthy and involved.

I should be happy, any time at your convenience, to discuss my position with you and to submit, either in person or in writing, a clarification of my deliberations. Please advise me as to your wishes.

Thank you for your attention.

Respectfully

Selective Service System
Local Board No. 65
39-01 Main Street
Flushing, New York

Gentlemen:

As the result of the resolution of a number of problems of conscience with which I have been preoccupied for the past months, I am bound to declare myself unwilling to participate in any violent military conflict, or in activities made in preparation for such an undertaking.

My decision arises from what I believe to be considerations of validity from the standpoint of the welfare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain. I have concluded that war, from the practical standpoint, is futile and self-defeating, and that from the more important moral standpoint, it is unethical.

The contention that war is futile needs little explanation, I suspect, since it is quite generally acknowledged. The ethical considerations may not be so obvious, but I have chosen not to undertake to explain them in this preliminary letter as the argument is somewhat lengthy and involved.

I should be happy, any time at your convenience, to discuss my position with you and to submit, either in person or in writing, a clarification of my considerations. Please advise me as to your wishes.

Thank you for your attention.

Respectfully,

Daniel A. Seeger

Daniel A. Seeger
50-66-35-620

[fol. 116]

Daniel A. Berger (59-66-35-1Bc)
1[illegible] Pidgeon Meadow Road
Flushing, New York

Selective Service System
Local Board No. 66
31-01 Main Street
Flushing, New York

[fol. 118]

SELECTIVE SERVICE SYSTEM
LOCAL BOARD NO. 66
JUL 29 1957
[illegible] Main Street
Flushing, N.Y.

GOVERNMENT'S EXHIBIT 13

SELECTIVE SERVICE SYSTEM

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No. 50 66 35 620

Date of mailing July 19,1957
Date received back at local board

[illegible]
Local Board No. 66
[illegible]
Flushing, N.Y.
(LOCAL BOARD STAMP)

Name Seeger, Daniel Andrew

Address 170-36 Pidgeon Meadow Road,

Flushing, Queens, New York

This form must be returned on or before JULY 29,1957

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire, SSS Form No. 100.

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only those officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) ~~I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and claim exemption from combatant training and service in the Armed Forces.~~

(Signature of registrant)

(B) I am, by reason of my religious ~~training and~~ belief, conscientiously opposed to participation in war in any form and I am conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

Daniel A. Seeger

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President, or shall, if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate, and any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or to both such fine and imprisonment.

Series II.—RELIGIOUS TRAINING AND BELIEFS

89-01 [illegible]

(LOCAL BOARD STAMP)

Address 170-36 Pidgeon Meadow Road,

Flushing, Queens, New York

This form must be returned on or before JULY 29,1957

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire, SSS Form, No. 100.

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only those officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I. CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) ~~I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I am not claiming exemption from combatant training and service in the Armed Forces.~~

(B) I am, by reason of my religious ~~training and~~ belief, conscientiously opposed to participation in war in any form and I am conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

Daniel A. Seeger

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President, or shall, if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate, and any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or to both such fine and imprisonment.

Series II.—RELIGIOUS TRAINING AND BELIEFS

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Do you believe in a Supreme Being? Yes ☐ No ☐ ☑ Please see attached sheet.

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation.

Please see attached sheet.

[fol. 119]

3. Indicate from whom or from what source you received the training and acquired the belief which is the basis of your present political [illegible]

Please see attached sheet.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

Please see attached sheet.

5. To [illegible] what extent, if any, do you believe in the use of force?

Please see attached sheet.

6. [illegible] actions and behavior in your life which in your opinion are not consistent [illegible] and [illegible]

7. [illegible] written or oral, to the views herein expressed as to [illegible] for your views made in Series [illegible]

I have never had the opportunity to express my views publicly to large numbers of people. However, My those of friends and acquaintances with whom I am accustomed to [illegible] discussing my problems are aware of my position.

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

8. [illegible] and address of each school and college with which you have been affiliated, together with the dates of your attendance; and [illegible] the type of [illegible] church, military, etc.)

			Dates Attended	
			From	To
P.S. [illegible] School	Elementary	Light Street, Flushing	19 42	19 49
[illegible] School	Secondary	Whitestone, New York	19 49	19 53
[illegible]	College	New York 3, New York	19 53	19 54
[illegible] College	[illegible]	Flushing, New York	19 54	19 --

9. [illegible] for the most part [illegible] expenses of [illegible] as a student in school or college, in-[illegible] compensation or not, giving the facts indicated below with regard to [illegible]

6. Give the name and present address of the individual upon whom you rely most for religious guidance.

Rev. [illegible] Post.

[illegible]

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify and state where.

I have never had the opportunity to express my views publicly to large numbers of people. However, my close friends and associates with whom I am associated in discussing my problems are aware of my position.

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and location of each school and college which you have attended, together with the dates of your attendance; and indicate the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended From	Dates Attended To
St. Kevin's School	Elementary	195th Street, Flushing	19 42	19 49
Bayside High School	Secondary	Bayside, New York	19 49	19 53
Cooper Union	College	New York 3, New York	19 53	19 54
Queens College	College	Flushing, New York	19 54	19 --

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each such job held or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked From—	Period Worked To
Clerical	Mutual Life Assurance Soc.	Seventh Avenue, N.Y.	19 53	19 53
Clerical	Lever Bros. Co.	Park Avenue	19 54	19 54
Caretaker	Seawanhaka Corinthian Yacht Club	Summers	19 56	19 57
			19	19
			19	19
			19	19

[fol. 120]

3. Give [illegible] last place of residence where you [illegible]

Name [illegible] Post Office Address [illegible]

have live[illegible] at Robert Andrews/Grove Ln

4. Give the name and address of your parents and indicate whether [illegible]

Mr. Andrew Beaver

Dora Ly Beaver (Mrs. Andrew Beaver)

5 (a) State the religious denomination or sect of your father [illegible]

(b) State the religious denomination or sect of your [illegible]

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a [illegible] and give reasons why you became a member.

No.

2. Are you a member of a religious sect or organization? No.

(a) through [illegible]

(a) State the name of the sect, and the name and location [illegible]

(b) When, where, and how did you become a member of [illegible]

(c) State the name and location of the church [illegible]

(d) Give the name, title, and present address of the pastor or leader of [illegible]

(e) Describe carefully the creed or official statement of [illegible]

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any fraternal organization? No. If so, list the names and dates of membership, and give reasons why you became a member.

No.

2. Are you a member of a religious sect or organization? No. If your answer to question 2 is "Yes," answer questions (*a*) through (*f*):

(*a*) State the name of the sect, and the name and location of the church, temple, or head if known to you.

(*b*) When, where, and how did you become a member of such [illegible]?

(*c*) State the name and location of the church, [illegible] you attended.

(*d*) Give the name, title, and present address of the [illegible] congregation, or body.

(*e*) Describe carefully the creed or official statements of such [illegible] organization in relation to participation in war.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, fraternal, social, political, or labor organizations.

Queens College Choral Society; member of Bas. Section
Queens College newspaper CROWN; editor-in-chief
Student Court, justice
Member of discussion group "Roundtable", etc.

[fol. 121]

110

Series V.—REFERENCES

* Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

NAME	FULL ADDRESS	OCCUPATION OR POSITION	RELATIONSHIP TO YOU
Dr. K. Bhaskara Rao	World University Service West 40th Street New York, New York	lecturer and former instructor in Oriental Studies at University of Iowa.	acquaintance

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended).

I, Daniel H. Seeger, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are not (are, are not) in my own handwriting.

Registrant sign here ✍ Daniel H. Seeger
(Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

(For example - registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

* I would like to request permission to submit

New York, New York

Instructor
in Oriental Studies
at University of Iowa.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

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Registrant sign here ☞ Daniel H. Seeger
(Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

* I would like to request permission to submit additional references at a future time. I have been unable to contact a number of people to obtain their consent. College is closed and the faculty members I am concerned with are apparently out of town.

Daniel Seeger

U. S. GOVERNMENT PRINTING OFFICE 16—58231-2

[fol. 122]

Daniel Andrew Seeger: 50-60-35-520

JAMES II. Question 1.

Of course, the existence of God cannot be proven or disproven, and the issue of it cannot be determined. I prefer to [illegible] question open rather than answer "God" or "no".

However, skepticism or disbelief in the existence of God does not necessarily [illegible] what ever. The martyrdom of Socrates is [illegible] that irony and skepticism may accompany a [illegible] faith. But persons as late, and [illegible] evolved comprehensive ethical systems [illegible] and moral integrity without belief in God, [illegible] remotest sense. Others, such as Epicurus, [illegible] and John Dewey, are, I believe, frankly atheists.

Act [illegible] taken through fear of [illegible] eternal reward is not moral conduct but [illegible] Plotinus said, "If a man seeks the good life for [illegible] outside itself, he loves the good life [illegible] feel more respect for the nobler spirit [illegible] quity, i.e., neither [illegible] virtue or their own names, and a well [illegible] purely ethical [illegible].

[illegible] moral order [illegible], intellectual [illegible] [illegible] [illegible]

SERIES II. Question 1

[fol. 123]

[fol. 124]

[illegible] a practical necessity. [illegible] terrorism [illegible] and a more [illegible]

[illegible] Organization for modern warfare demands [illegible] changes in the values of our society. [illegible] cultural and spiritual [illegible] of a society [illegible] ware modern mass warfare is incompatible [illegible] of a society that [illegible]

For example, in training soldiers [illegible] is placed on finding and developing "natural-born" leaders who can command complete devotion [illegible] This effort to take advantage of [illegible] create unquestioning loyalty to a leader is not likely to strengthen the spiritual roots of democracy, which requires exactly the opposite attitudes [illegible] development.

This would be disastrous [illegible] limited to the military, but [illegible] in our whole culture. [illegible] of military establishments alone, [illegible] by every citizen and demands the highest possible [illegible] of national unity. Individual rights must be subordinated [illegible]

a cause, or because they have no other choice.

[illegible] ...ary, the "drive" [illegible] ...ward [illegible] ...are [illegible] ...ere [illegible] ...ion [illegible] ...ter- [illegible] ...rism [illegible] ...ol, [illegible] ...ary, [illegible] ...and [illegible] ...ill [illegible].

[illegible] ...ace [illegible] ...ance. When freedom [illegible] ...ity [illegible] ...War [illegible] ...demands [illegible] ...tional [illegible] ...ties [illegible] ...ficed. [illegible] ...ally considered [illegible] ...istics [illegible] ...ism: spying [illegible] ...ow citizens; anonymous [illegible]; restrictions [illegible] ...dom of movement, speech, [illegible]; persecution [illegible] ...beliefs [illegible] ...; the reversal [illegible] ...traditional assumption [illegible] ...cent until proof [illegible].

Organization [illegible] ...modern warfare demands [illegible] ...changes in the values of our society. [illegible] ...organization, cultural and spiritual [illegible] ...of a modern [illegible] ...ware modern mass warfare is incompatible [illegible] ...of a society that [illegible] ...democratic [illegible].

For example, [illegible] ...training soldiers [illegible] ...is placed on finding and developing "natural-born" [illegible] ...who can command complete [illegible] ...and [illegible] ...obedience. This effort to take advantage of [illegible] ...to create unquestioning loyalty to a leader is not likely to strengthen the spiritual roots of democracy, which requires exactly the opposite attitudes for its healthy development.

This would be disasterous enough if it were limited to the military, but the same forces are at work in our whole culture. Modern war is no longer the problem of military establishments alone, but it must now be borne by every citizen and demands the highest possible degree of national unity. Individual rights must be submerged in the interests of national security, and we have already had widespread and irrational hysteria abroad in the land. Such attitudes strike at the very heart of democracy.

Sincerely [illegible]
Lewis [illegible]

Jan. 2-1957

[illegible]-01 [illegible] Street
Flushing, N. Y.

[illegible] are inappropriate to their ends, [illegible] use such means would be to monopolize [illegible] ends. [illegible] democracy for the illusory security of [illegible]. Military power is as corruptible [illegible] as it is pitiless to its victims.

[illegible] I cannot participate in anti-[illegible] of freedom and humanity. Experience with the past indicates that our armament policy will lead to war, and war, with its indiscriminate crushing of human values, cannot preserve moral values. We cannot preserve freedom by denying freedom; the end does not justify the means. To resort to immoral means is not to preserve or vindicate moral values, but only to become collaborators in the destruction of moral life among men.

In the event that some future military catastrophe should overtake the world, I should be willing and anxious to devote my small capacities for work among the civilian populations of devastated areas, so long as I am reasonably certain that my participation is not simply freeing someone else for activities I would not conduct myself.

"A fearful weariness has come into life," wrote [illegible] Wells in [illegible] at the End of Its Tether. Shaw, in The Vice of Our Past, continues: "Perhaps the most [illegible] thing about life today is that it does not seem [illegible] much. We have come to crises and horror, as to novelty; we should find tomorrow in which there was no threat of further frightfulness." Yet we must [illegible] for the "tomorrow." My above discussion indicates no way out of the impasse in which twentieth-century culture finds itself. A possible alternative to violence is offered by the Quakers in their pamphlet Speak Truth to Power, from which much of my thought is derived. Although I disagree with them on several basic philosophical points, I endorse their program as the best I have seen advanced. The possibility of peace is preferable to eternal disaster.

I realize that to the hard-headed, practical, "man-of-the-world" my contentions sound like an unhealthy mixture of youthful idealism and an insufficient dose of philosophy, with a result that has little relation to reality. Impossible and impractical perhaps, but if it were not for the handful of anonymous idealists who constantly strove for the impossible throughout history, the possible would never have been achieved.

[illegible] the

[illegible] the cause of freedom by humanity. Experience with the past indicates that our present policy will lead to war, and war, with its indiscriminate crushing of human values, cannot preserve moral values. We cannot preserve democracy by destroying freedom; the end does not justify the means. We purport to [illegible] is not to preserve or promote democratic values, but only to become collaborators in the [illegible] of all of the human race.

I believe that in case of a military catastrophe which overtakes the free world, I should be willing, however anxious to avoid any participation in the slaughter of innocent people, to perform services of national importance in the civilian population of the United States, so long as I can reasonably certify that my participation is not simply to release someone else for military service. I would not conduct myself.

"A beautiful phrase has come into life," wrote [illegible] in [illegible] of Ivan the Terrible. Shaler, in [illegible] of Man, continues: "Perhaps the most [illegible] about life today is that it does not seem [illegible] with hope. We have come to despise and fear, or, as the novelist, we should like to conjure a morrow in which there was [illegible] of human life." Yet we must [illegible] for the "near tomorrow." My above discussion indicates no way out of the impasse in which the twentieth century culture finds itself. A possible alternative to violence is offered by the Quakers in their pamphlet Speak Truth to Power, from which much of my thought is derived. Although I disagree with them on several basic philosophical points, I should like to say that I have been deeply impressed. The possibility of peace is preferable to [illegible] alternative.

I realize that to the [illegible]-minded, practical, "man-of-the-world" my contentions sound like an unhealthy mixture of youthful idealism and an insufficient dose of philosophy, with a result that has little relation to reality. Impossible and impractical perhaps, but if it were not for the handful of anonymous idealists who constantly strove for the impossible throughout history, the possible would never have been achieved.

Certainly the solution to our difficulty is not easy, for the effort to meet the challenge of establishing a world order on the principles of equity and justice will prove to be the most extraordinary adventure of the human spirit. Let us hope that the challenge will be met, and that we will [illegible] of fanaticism or monstrosity, like the dinosaurs before us.

Selective Service
Local Board No. 23

JUL 29 1957

39-01 Main Street
Flushing, N. Y.

[fol. 126]

SERIES II. Question 3

Readings over the past ten months from:
Floyd, William: War Resistance
Gandhi, Mohandas: Indian Home Rule
Gandhi, Mohandas: Satyagraha
Jones, E. Stanley: Mahatma Gandhi
Kaplan, Alexandre: Gandhi et Tolstoi: Les sources d'une filiation spirituelle
Kvitko, David: A Philosphic Study of Tolstoi
Russell, Bertrand: Dare We Look Ahead?
Russell, Bertrand: Justice in Wartime
Russell, Bertrand: Which Way to Peace
American Friends Service Committee: Speak Truth to Power
etc,

and my own deductions from information and concepts set forth in a large number of other non-pacifist writings, for example Herbert J. Muller's The Uses of the Past; Harrison Brown's The Challenge of Man's Future; Erich Fromm's Escape From Freedom , and others.

Series II. Question 4

I rely on no particular person for religious guidance. I resolve spiritual and ethical problems by reading relavent essays or books, by discussion and debate with colleagues, and ultimately, by following the dictates of my conscience.

SERIES II. Question 5

Tolstoi, basing his conclusion on a strict interpretation of the Sermon on the Mount, can come to the conclusion that conduct is not judged by its consequences. He considers action to be inherently right or wrong. Thus he writes: "If a man is a Christian, and so recognizes God and sees the meaning of life in the fulfillment of His will, no matter what terrible robber may attack any innocent child he has no cause to depart from the law given him by God and do to the robber what the robber wants to do to the child." ~~XXXX~~ To Tolstoi no use of force is ever right.

However, if the way of Jesus is sublime, it is not necessarily the only good way, or under all circumstances the best way. Perhaps today the world needs reasonable ess more than it needs fervor, and wisdom rather than holiness. I there ore tend to favor Bertrand Russell's broader outlook: "No one who holds that human conduct ought to be such as to promote certain ends -- no matter what ends may be selected -- will expect any absolute hard and fast

Kvitko, David: A Philosphic Study of Tolstoi
Russell, Bertrand: Dare We Look Ahead?
Russell, Bertrand: Justice in Wartime
Russell, Bertrand: Which Way to Peace
American Friends Service Committee: Speak Truth to Power
etc,

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Series II. Question 4

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SERIES II. Question 5

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Selective Service System
LOCAL BOARD NO. 66
JUL 29 1957
39-01 Main Street
Flushing, N. Y.

[fol. 127] GOVERNMENT'S EXHIBIT 19

(Local Board Stamp)

INTERVIEW
SUMMARY OF ~~HEARING~~

At a interview held on Oct. 21, 1958 before a
(Date)

Member or Members of this Local Board, the registrant

Daniel A. Seeger, 50 66 35 620 submitted
(Name) (SS No.)

the following new information.

I would like to request the board to reconsider my Form 150 or to grant me permission to appeal my 1a classification.

Upper classman in Queens' College in physics. Intends to follow teaching or go into industry. Was reared in Roman Catholic Church but is not now attached. Age 23 No organizational affiliations.

Action: 1a continued

SUMMARY OF ~~HEARING~~ interview

At a ~~hearing~~ held on Oct. 21, 1958 before a
(Date)

Member or Members of this Local Board, the registrant

Daniel A. Seeger, 50 66 35 620 submitted
(Name) (SS No.)

the following new information.

I would like to request the board to reconsider my Form 150 or to grant me permission to appeal my 1a classification.

[redacted]

Upper classman in Queens' College in physics. Intends to follow teaching or go into industry. Was reared in Roman Catholic Church but is not now attached. Age 23 No organizational affiliations.

Action: 1a continued

[redacted]

[Copy illegible.]

Member(s) Signature

SSS - N. Y. City
Form No. 3

[fol. 128] GOVERNMENT'S EXHIBIT 20

50-66-35-620

Seeger, Daniel A.
328 West 89 St.,
New York, 24, New York

To the Appeal Board:

Registrant appeals from 1A classification voted August 26,1958 and continued October 21, 1958 after appearance before Local Board.

The basis for the appeal is that the registrant believes himself to be a conscientious objector, by virtue of his aversion to war in any aspect, including civilian aid or medical assistance to our Armed Forces.

Respectfully submitted,

Harry Herschman, A.G.S.A.

October 21,1958

[fol. 129]

GOVERNMENT'S EXHIBIT 21

328 West 89th Street
New York City 24, New York
Monday, October 27, 1958

Selective Service System
LOCAL BOARD NO. 66
OCT 29 1958
39-01 Main Street
Flushing, N. Y.

United States Selective Service System
Local Board #66
39-01 Main Street
Flushing, New York

Gentlemen:

This letter is to advise you of my desire to appeal the 1-A classification which the board assigned to me at its meeting last Tuesday evening, October 21st.

Thank you for your attention.

Yours truly,

Daniel A. Seeger

Daniel Andrew Seeger
(50 66 35 620)

[fol. 130]

GOVERNMENT'S EXHIBIT 24

New York City Selective Service System

(Local Board Stamp)

QUESTIONS TO BE ANSWERED BY A REGISTRANT CLAIMING TO BE A CONSCIENTIOUS OBJECTOR AND/OR MINISTER OF RELIGION

Date November 14, 1958

SEEGER, DANIEL ANDREW — 50-66-35-620

Registrant's Name — Selective Service No.

1. How does registrant earn a living?

2. Describe secular employment:

   a. Type of work

   b. Hours

   c. Wages

   d. Name of Employer

3. What was registrant's income from secular employment during the past 12 months?

4. Does registrant preach and teach the principles of religion?

   a. If so, how many hours a month?

   b. How many members are there in his Congregation?

   c. How many other ministers are there in his Congregation?

5. Give title, or titles, if any, registrant holds in his Congregation and submit certification of such assignment.

   a. Is registrant a Pioneer? If so, submit certification from Watchtower Bible and Tract Society

   b. How many other Pioneers in his Congregation?

CONSCIENTIOUS OBJECTOR AND/OR MINISTER OF RELIGION

November 14, 1958

SEEBER, DANIEL ANDREW — 50-56-35-630

Registrant's Name — Local Board Number

1. How does registrant earn a living?

2. Describe secular employment:

   a. Type of work — c. Wages

   b. Hours — d. Name of Employer

3. What was registrant's income from secular employment during the past 12 months?

4. Does registrant preach and teach the principles of religion?

   a. If so, how many hours a month?

   b. How many members are there in his Congregation?

   c. How many other ministers are there in his Congregation?

5. Give title, or titles, if any, registrant holds in his Congregation and submit certification of such assignment.

   a. Is registrant a Pioneer? — If so, submit certification from Watchtower Bible and Tract Society

   b. How many other Pioneers in his Congregation?

   c. List number of hours reported to Watchtower Bible and Tract Society as spent in Pioneer Ministerial duties each month for past three months.

(over)

[fol. 131]

6. List all ministerial duties performed over past month and number of hours to each duty.

   a. How much of registrant's time over the past month was devoted to selling or distributing literature?

7. With regard to conscientious objection, state under what circumstances registrant believes in the use of force.

8. Is registrant's conscientious objection based upon the views of the Watchtower Bible and Tract Society as expressed in the pamphlet "Neutrality" and the article "Why Jehovah's Witnesses are not Pacifists"?

9. Will registrant participate in any war that he understands is authorized by Jehovah?

10. Does the registrant believe in the use of force in defense of:

himself?	his religion?
his family?	his brethren?
his home?	his Government?
his Country?	

11. Is registrant's conscientious objection based primarily upon his desire to preach or upon his unwillingness to use force?

selling or distributing literature?

8. Is registrant [illegible]
tower Bible and Tract Society [illegible]
and the article "Why Jehovah's Witnesses [illegible]

9. Will registrant participate in any way that he understands [illegible]
Jehovah?

10. Does the registrant believe in the use of force in defense of:

himself? his religion?

his family? his brethren?

his home? his Government?

his Country?

11. Is registrant's conscientious objection based primarily upon his desire to preach or upon his unwillingness to use force?

SSS-N.Y.City
Form No. 54
(Revised May 1957)

[fol. 132]

Daniel Andre. [illegible]

Answers to questionnaire [illegible]

1. How does registrant earn living?
As a bank clerk.

2. Describe secular employment:
a. Type of work — clerical , with some simple bookkeeping.
b. Hours — 5 p.m. to 1 a.m. Monday through Friday.
c. Wages — $60.00 per week.
d. Name of Employer —
The Marine Midland Trust Company of New York
120 Broadway, New York City

3. What was registrant's income from secular employment during the past twelve months?
Approximately $2630.00

4. Irrelevant
5. "
6. "

7. With regard to conscientious objection, state under what circumstances registrant believes in the use of force.

This registrant does not subscribe to an unqualified rejection of force. The word force has many meanings. In answering a question on the use of "force" it is necessary to analyze the various kinds of force and examine the circumstances under which each might be used.

I think that the following distinctions are of interest:

1. Is the force violent or non-violent?
2. Is it active or passive?
3. Is it within or without a social contract?
4. Is it creative or destructive?
5. Is it restraining or vengeful?
6. Is it dangereus to bystanders or other innocent persons?

The registrant believes the following statement by Adous Huxley is a good summary of his own attitude on the use of force in society, especially in the case of armies and police organizations:

"The force which armies are empowered to use is not limited. Their function is not to restrain the guilty; it is to destroy all things and people within their range. When the police wish to arrest a criminal, they do not burn up a town in which he is living and kill and torture all its inhabitants. But

7. With regard to conscientious objection, state under what circumstances registrant believes in the use of force.

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I think that the following distinctions are of interest:

1. Is the force violent or non-violent?
2. Is it active or passive?
3. Is it within or without a social contract?
4. Is it creative or destructive?
5. Is it restraining or vengeful?
6. Is it dangerous to bystanders or other innocent persons?

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> "The force which armies are empowered to use is not limited. Their function is not to restrain the guilty; it is to destroy all things and people within their range. When the police wish to arrest a criminal, they do not burn up a town in which he is living and kill and torture all its inhabitants. But this is precisely what the army does, particularly an army using modern weapons.
>
> "States arrogate to themselves not only the right to judge other states, but also, by means of their armies, to punish them. The principle is wholly repugnant to law; moreover, the process of punishing a guilty nation entails the destruction of countless innocent individuals. An army with tanks and bombing squadrons is not and cannot be a police force. Nor can its essentially evil and destructive functions be moralized by calling it a League army, an

instrument of collective security, etc. Police operate with the universal consent of the community which employs them..."

Questions about force on the individual level are difficult to answer. What if we are attacked by thieves? What of the little girl who is molested? (The registrant is indebted to material published by the Central Committee for Conscientious Objectors in answering the above.)

In deciding these commonly discussed problems, the registrant believes that the same general principles that are outlined above apply. Thus, if it were in our power, we would restrain the attacker and the thief. We would not try to stop them, however, if doing so meant killing or injuring other innocent people. One can know and reject the folly and immorality of war without unqualifiedly rejecting all forms of force or restraint in all circumstances.

It is important to realize that all philosophies or religions, however sincere, must come to grips with questions which cannot be answered by pat phrases. Experience and reality to not fit themselves neatly into philosopher's categories, and the conscience must always search, sometimes painfully, for the answers to the moral questions which life presents. We cannot live by isolating ourselves from the social fabric in which we find ourselves. We can only strive for the good by a constant series of adjustments consonant with the demands of conscience and those of reality. This is called "drawing the line." Thus an orthodox Jewish person must in some way reconcile traditional orthodoxy with the demands of modern life. Similarly, many Christians would, in good conscience, draw a line between their religion's demands for brotherly love and samaritan-like assistance to one's neighbor and their own business activities, maintaining that in economic activities it is just to compete freely and vigorously with one's neighbor, attending to one's own prosperity at a neighbor's expense.

I would like to conclude by quoting my own answer to question five on form SSS150:

"Tolstoi, basing his conclusion on a strict interpretation of the Sermon onn the Mount, can come to the conclusion that conduct is not judged by its consequences. He considers action to be inherently right or wrong. Thus he writes: 'If a man is a Christian and sees the meaning of his life in the fulfillment of His will, no matter what terrible robber may attack any innocent child, he has no RIGHT cause to depart from the law given him by God and do to the robber what the robber wants to do to the child." To Tolstoi, no use of force is ever right.

"However, if the way of Jesus is sublime, it is not the only good way, or under all circumstances the best way. Perhaps today's world needs reasonableness more than it needs fervor, and wisdom rather than holiness. I therfore tend to favor Bertrand Russell's broader outlook: 'No one who holds that human conduct ought to be such as to promote certain ends — no matter what end may be selected — will expect any absolute hard and fast rules of conduct to which no exceptions can be found.'"

is molested? (The registrant is indebted to material published by the Central Committee for Conscientious Objectors in answering the above.)

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8. Is the registrant's conscientious objection based upon the views of the Watchtower Bible and Tract Society as expressed in the pamphlet "Neutrality" and the article "Why Jehovah's Witnesses are not Pacifists"?

No.

9. Irrelevant.

11. Is the registrant's objection based

10. See answer to question

[fol. 134]

GOVERNMENT'S EXHIBIT 26

.85

NEW YORK CITY APPEAL BOARD
FOR THE SELECTIVE SERVICE SYSTEM
IN THE EASTERN FEDERAL
JUDICIAL DISTRICT - PANEL No. 2
205 East 42nd Street
New York 17, N. Y.

Selective Service System
LOCAL BOARD NO. 56

MAR 18 1959

39-01 Main Street
Flushing, N. Y.

16 March 1959

50- 66-35-620

Honorable Cornelius W. Wickersham, Jr.
United States Attorney
Eastern District of New York
271 Washington Street
Brooklyn, New York

Subject: SEEGER, Daniel Andrew
Conscientious Objector

Dear Sir:

Pursuant to the provisions of Section 1626.25 of the Selective Service Regulations, we transmit herewith the cover sheet of the above named registrant for the purpose of securing an advisory recommendation from the Department of Justice, on his claim as a conscientious objector.

The Appeal Board has reviewed the file and has tentatively determined that the registrant should not be classified in Class I-O or in a class lower than Class I-O.

Sincerely yours,

Vito F. Lanza
Chairman

39-01 [illegible] Street
Flushing, N. Y.

16 March 1959

50- 66-35-620

Honorable Cornelius W. Wickersham, Jr.
United States Attorney
Eastern District of New York
271 Washington Street
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Sincerely yours,

Vito F. Lanza
Chairman

Enclosure: Cover Sheet
cc: Local Board No. 66

[fol. 135] GOVERNMENT'S EXHIBIT 27-A

SLOAN-KETTERING INSTITUTE FOR CANCER RESEARCH
RESEARCH UNIT OF MEMORIAL CENTER
FOR CANCER AND ALLIED DISEASES
410 EAST 68TH STREET
NEW YORK 21, NEW YORK

September 2, 1959

Mr. John M. Lockwood
22 Oakwood Road
Huntington, New York

Dear Mr. Lockwood:

This letter is to acknowledge your notification advising me of the hearing which will be held to consider my claim for exemption from military service.

Within the next few days I will send you a written statement containing my comments on the inquiry conducted by the FBI. In order that my comments can deal exactly with the information developed by the investigation, and in order that I may be prepared to adequately refute any erroneous information or impressions contained in the report, I would like to strongly request permission to peruse the entire file compiled by the FBI relevant to my claim. With your permission I would like to see the report before the hearing. Please advise me as to the circumstances under which I may do so.

I will appear at the Federal Building with my witnesses on September 10, 1959 at 11:30 a.m. for the proceedings.

Thank you for your attention.

Yours truly,

Daniel A Seeger

Daniel A. Seeger

[fol. 136] GOVERNMENT'S EXHIBIT 27-B

COPY

September 3, 1959

Mr. Daniel A. Seeger
Sloan-Kettering Institute for
Cancer Research
410 East 68th Street
New York 21, New York

Dear Mr. Seeger:

I have your letter of September 2, 1959.

The notice of hearing and the summary of the information received during the investigation contained no indication that there was any "erroneous information or impressions."

The file compiled by the FBI is confidential and I am in no position to permit you to peruse it.

I am sure that you will not be handicapped by the confidential nature of the report at the hearing, as you will have a full opportunity to bring out all the information you desire.

Yours very truly,

COPY

Mr. Daniel A. Seeger
Sloan-Kettering Institute for
Cancer Research
410 East 68th Street
New York 21, New York

Dear Mr. Seeger:

I have your letter of September 2, 1959.

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Yours very truly,

John M. Lockwood

JML:CH

[fol. 137] ENCLOSURE TO GOVERNMENT'S EXHIBIT 27-C

328 W. 89th Street
New York 24, New York

September 8, 1959

Mr. John Marshall Lockwood
22 Oakwood Road
Huntington, New York

Dear Mr. Lockwood:

I have enclosed herewith my comments on the resuhe of the inquiry conducted by the FBI as suggested in Paragraph Five of the Addendum you sent me.

Respectfully,
Daniel A. Seeger
Daniel A. Seeger

DS:bja

[fol. 138] GOVERNMENT'S EXHIBIT 27-C

Registrant's Comments on Resume of Information Developed by the Inquiry.

Daniel A. Seeger
328 W. 89th Street
New York City 24, N.Y.

The traditional American attitude toward the political, religious, and philosophical convictions of citizens is that these topics are primarily a matter of individual conscience, not public business, and that the genuineness of a person's beliefs is reflected in the integrity with which he faces the general activities and events, both large and small, of daily life. The resume of information compiled by the FBI has many appropriate references to such general behavior, and on this aspect of the report I need not comment.

However, it cannot be expected of a person that he confide the details of his political beliefs to employers or business acquaintances, or that he describe the items of his religious belief to professors or neighbors. The respect for the integrity and privacy of the individual conscience is fundamental to our way of life. I cannot condone any inquiry which seems to imply that an indiscriminate knowledge by everyone of everyone else's private thought is an ideal. The idea that an individual must prove his sincerity by exposing his private political beliefs to the surveillance of employers or neighbors strikes at the very heart of democracy.

> "Current neighbors comment favorably upon registrant's character and reputation but were unable to comment on the sincerity of his claim."

No one who is at all familiar with the manners and habits of apartment dwellers in Manhattan could expect a neighbor to have enough knowledge of the situation to offer comment.

320 W. 69th Street
New York City 24, N.Y.

The traditional American attitude toward the political, religious, and philosophical convictions of citizens is that these topics are primarily a matter of individual conscience, not public business, and that the genuineness of a person's beliefs is reflected in the integrity with which he faces the general activities and events, both large and small, of daily life. The resume of information compiled by the FBI has many appropriate references to such general behavior, and on this aspect of the report I need not comment.

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> "Current neighbors comment favorably upon registrant's character and reputation but were unable to comment on the sincerity of his claim."

No one who is at all familiar with the manners and habits of apartment dwellers in Manhattan could expect a neighbor to have enough knowledge of the situation to offer comment.

> "Registrant has been employed at the Marine Midland Trust Company as a clerk since December 10, 1957. Fellow employees commented favorably upon the registrant's character but did not know of his conscientious-objector claim and could not comment on his sincerity with respect to such a claim. One employee advised that he and some other clerks discussed military service and teased the registrant about his having to go into the military service. He stated that the registrant never expressed

[fol. 139]

any objections to military service. He further advised that the registrant never discussed his psychological or religious beliefs and kept his affairs to himself."

I have no "psychological beliefs."

I am certain that at one time or another during my employment at the Marine Hall in Detroit I told various co-workers of my claim. I am positive that at the time I left Marine Midland at least four of the people in my office knew of my claim. (The staff I worked on consisted of from six to eight people). I am surprised in discussing this statement in the results by not knowing who the I interviewed. Perhaps they confided their information to older superiors with whom I never spoke about anything except business.

During my employment at Marine Midland three other students were hired, all of whom had just finished military service. Naturally the conversation was predominantly about their experiences, and naturally they jestingly gloated at the only non-veteran in the group. The teasing was good-natured and I enjoyed the best relationship with them.

When a person entertains an unconventional point of view which he believes in seriously, he can hardly be expected to expound upon it in a group whose mood is jocular, for example when three veterans are teasing a non-veteran about the services. Rather it would be expected that a person with an uncommon point of view would wait until the advocates of the standard idea were faced with a paradox in their position and then would try to make a point in the more serious atmosphere.

Each of the employees who used to tease about military service came eventually to know of my conscientious objector claim. All discussed it with me from time to time.

The registrant believes that the character references contained in the report are valid. However, it seems that the reiteration of the idea that certain people had no knowledge of the claim is unjust. It seems to the registrant that the people who were interviewed would hardly be likely to know of the claim. The nature of the convictions is such that it is most likely to be discussed among personal friends, not among fellow office workers or neighbors.

I have no psychiatric problems.

I am certain [illegible] during my employment at the [illegible] told various co-workers of my claim. [illegible] the time I left [illegible] office knew of my claim. (The staff I worked on consisted from ten to eight people). [illegible] Considering this statement in the record, [illegible] interviewed. Perhaps they confined their [illegible] older employers with whom I never spoke about [illegible] matters.

During my employment at [illegible] three other students were hired, [illegible] finished military service. Naturally the conversation [illegible] predominantly about their experiences, [illegible] naturally they jestingly [illegible] as the only non-veteran in the group. The teasing was good-natured [illegible] enjoyed the best relationship with them.

When a person encounters [illegible] point of view which he believes in seriously, he can hardly be expected to expound upon it in a group whose mood is jocular, for example when three veterans are talking [illegible] about the services. Rather it would be expected that a person with an uncommon point of view would wait until the advocates of the standard idea were faced with a pure ox in their position and then would try to make a point in the more serious atmosphere.

Much of the employees who used to talk about military service came eventually to know of my conscientious objector claim. All discussed it with me from time to time.

The registrant believes that the character references contained in the report are valid. However, it seems that the reiteration of the idea that certain people had no knowledge of the claim is unjust. It seems to the registrant that the people who were interviewed would hardly be likely to know of the claim. The nature of the convictions is such that it is most likely to be discussed among personal friends, not among fellow office workers or neighbors.

The registrant developed a wide circle of acquaintances while a student at Loyola College. Apparently the FBI spoke to none of them. The registrant was editor-in-chief of the undergraduate newspaper, in which capacity he had to deal with 40 to 60 people under circumstances (editorial board meetings) which would cause his ideas to be obvious to all of them. Their names are clearly listed in the masthead. Apparently the FBI interviewed no one who was a member of my staff on the newspaper. The campus

[fols. 140-141]

[fol. 142]

GOVERNMENT'S EXHIBIT 31

NEW YORK CITY APPEAL BOARD
FOR THE SELECTIVE SERVICE SYSTEM
IN THE EASTERN FEDERAL
JUDICIAL DISTRICT - PANEL No. 2
205 East 42nd Street
New York 17, N. Y.

23 October 1959

50-66-35-620

Mr. Daniel Andrew Seeger
328 West 89th Street
New York 24, New York

Dear Sir:

Your appeal is before this Appeal Board Panel for consideration and action.

In line with existing procedure and before action is taken by the Panel, an opportunity is afforded you to file a reply to the recommendation of the Department of Justice.

A copy of the recommendation of the Department of Justice is enclosed herewith for your information and study. You have thirty days from the date of the mailing of this letter in which to file a reply with this Appeal Board concerning the recommendation of the Department.

We will not decide your appeal until a reply is received from you or the thirty day period has expired, whichever occurs first.

In arriving at our decision, you may rest assured that we will consider all the evidence in your file, together with the recommendation of the Department of Justice, and any reply received from you.

Yours truly,

Vito F. Lanza
Chairman

New York 17, N. Y.

23 October 1959

50-(-35-(20

Mr. Daniel Andrew Seeger
328 West 89th Street
New York 24, New York

Dear Sir:

Your appeal is before this Appeal Board Panel for consideration and action.

In line with existing procedure and before action is taken by the Panel, an opportunity is afforded you to file a reply to the recommendation of the Department of Justice.

A copy of the recommendation of the Department of Justice is enclosed herewith for your information and study. You have thirty days from the date of the mailing of this letter in which to file a reply with this Appeal Board concerning the recommendation of the Department.

We will not decide your appeal until a reply is received from you or the thirty day period has expired, whichever occurs first.

In arriving at our decision, you may rest assured that we will consider all the evidence in your file, together with the recommendation of the Department of Justice, and any reply received from you.

Yours truly,

Vito F. Lanza
Chairman

Enclosure
cc: Local Board No. 66 ✓

[fol. 143] GOVERNMENT'S EXHIBIT 33-A

328 West 87th Street
New York City 24, New York

November 2, 1959

Mr. Vito F. Lanza, Chairman
New York City Appeal Board
Eastern Federal Judicial District
Panel No. 2
205 East 42nd Street
New York 17, New York

Dear Sir:

I have enclosed my reply to the recommendation of the Department of Justice relevant to my conscientious objector claim.

I would like to inquire if it would be possible to appear before the Board in person to clarify any questions that may arise concerning my contentions.

Also enclosed is a letter from my family which I have consented to send. I submit it for whatever interest it may have to you.

Thank you very much for your attention.

Yours truly,

Daniel A. Seeger

Daniel A. Seeger

SSS ref. 50-66-35-620

DAS:bja

The Board has before it two contradictory recommendations, one by Special Hearing Officer John Marshall Lockwood and the other by Mr. T. Oscar Smith of the Department of Justice. I would like to thank the Board for this opportunity to present my own comments. I will proceed directly with the discussion, which will be based on six points:

I. ON THE AMERICAN IDEAL

> "He (God) has formed us moral agents ... that we may promote the happiness of those with whom he has placed us in society, by acting honestly toward all, benevolently to those who fall within our way, respecting sacredly their rights, bodily and mental, and cherishing especially their
>
> freedom of conscience,
>
> as we value our own. I must ever believe that religion substantially good which produces an honest life, and we have been authorized by one whom you and I equally respect to judge of the tree by its fruit. Our particular principles of religion are a subject of accountability to our God alone. I inquire after no man's and trouble none with mine, nor is it given to us in this life to know whether yours or mine, our friends' or our foes', are exactly the right. Nay, we have heard it said that there is not a Quaker or a Baptist, a Catholic or a Protestant in Heaven, that, on entering the gate we leave those badges of schisms behind and find ourselves united in those principles only in which God has united us all."
>
> THOMAS JEFFERSON

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I. ON THE AMERICAN IDEAL

> "He (God) has formed us moral agents ... that we may promote the happiness of those with whom he has placed us in society, by acting honestly toward all, benevolently to those who fall within our way, respecting sacredly their rights, bodily and mental, and cherishing especially their
>
> freedom of conscience,
>
> as we value our own. I must ever believe that religion substantially good which produces an honest life, and we have been authorized by one whom you and I equally respect to judge of the tree by its fruit. Our particular principles of religion are a subject of accountability to our God alone. I inquire after no man's and trouble none with mine, nor is it given to us in this life to know whether yours or mine, our friends' or our foes', are exactly the right. Nay, we have heard it said that there is not a Quaker or a Baptist, a Catholic or a Protestant in Heaven, that, on entering the gate we leave those badges of schisms behind and find ourselves united in those principles only in which God has united us all."
>
> THOMAS JEFFERSON

> Amendment IX
>
> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Having been so thoroughly schooled in the concepts which are typified by the preceding passages, it seems strange to find myself facing a blank page with the chore of writing a

defense of a right to be treated as citizens even though [illegible] cultural national differences from them.

The fifty states of America are originally formed as a social contract under permitted citizens a freedom of choice to construct their lives after their own individual fashion, to create their own happiness, and to grow in morality and [illegible] justice in the spiritual sense by their personal exemplance. The architects of the republic, fearful of their own unpleasant experiences, were careful to provide that their growth of the individual should not be inhibited by the dominance of an over-ruling state or by the power the proclamations of a religion or complicity of [illegible] or unification.

These concepts were formulated into a government by the leaders of a small, agrarian society. The thirteen colonies were separated from other powerful nations by the then vast Atlantic Ocean. The sense of place in the new idea of government and the liberties it was designed to preserve by the [illegible] of that society and the growing proximity of other industrialized nations [illegible] to perpetuate those precious freedoms to [illegible] unforeseen in their formulation. By and large the spirit of the terms of the framers of the Constitution has been preserved. The existence of this appeal board is a witness to that fact.

The greatest challenge to democracy has been the rise in the world of fallen [illegible] philosophies born amidst great bitterness, deprivation and chaos. In the subsequent global conflicts they remained elsewhere but [illegible] war. We have already grown accustomed to those wars, and number them as in anticipation of an entire series.

We need not lament here the dismal past, the extermination of vast civilian populations, the application of the human intellect once to the invention of diabolical weapons and the [illegible] annihilation of the prime of the race into battles. Some of the latter, merely 18, rallied by the sound of trumpets, knew nothing of the ways of men and the implication of their deeds. They are

defense of my right to be treated as others ever should my [illegible] differ from theirs.

[illegible] of America, who originally [illegible] permitted citizens [illegible] to pursue their lives [illegible] and individual [illegible], to pursue their own happiness, [illegible] to [illegible] justice in the [illegible] security, to [illegible] confidence. The architects of the Republic, mindful of their own unpleasant experiences, were careful to provide that this growth of the individual should not be inhibited by the restraints of an over-zealous state or by the [illegible] machinations of a religion or complicity of [illegible] institutions.

[illegible] were formulated into a government by the [illegible] of a young, agrarian society. The thirteen colonies [illegible] from other powerful nations by the then vast [illegible] ocean. The forces placed in the new hands of government and the liberties it was designed to preserve, by the [illegible] of that society and the growing proximity of wider threatening [illegible] called for [illegible] to accommodate those precious freedoms [illegible] conditions unforeseen at their formation. By and [illegible] the courts of the land of the Constitution [illegible] preserver. The existence of this appeal board is a witness to that fact.

The [illegible] to democracy has been the rise in the world of [illegible] totalitarianism - illegitimate born [illegible] fear, frustration and chaos. In the subsequent [illegible] conflict many see the alternative as that war. We have already been accustomed to these wars, and number them as [illegible] in anticipation of an entire series.

We need not lament here the dismal past, the extermination of vast civilian populations, the application of the human intelligence to the invention of diabolical weapons and the conscription of the prime of the race into battles. Some of the latter, barely 18, rallied by the sound of trumpets, knew nothing of the ways of men and the implication of their deeds. They are the most tragic. Others, perceiving the madness were bullied and went along for expediency's sake. They are pitiable. Still others, seeing no alternative but battle made their great sacrifice in the hope of a better future for their fellows. They are truly heroic. No matter how convinced one may be of the futility and evilness of their method, one cannot negate their intent.

[fol. 146]

[illegible]

It would not be [illegible]

[illegible]

John Stuart Mill, in his [illegible] On Liberty, has provided the most classic [illegible] role of free consideration in an open society. The function of democracy requires an broadest dispersal of the spectrum of opinion. Solving the problems under the society thus involves the process of selection from "the marketplace of ideas" of the best solution. This occurs through a competitive process of argument and discussion. Government disparagement or denial of a specific point of view will narrow the [illegible] and skew the ultimate solution less exact. Even rejected and unpopular points of view must be protected. Their role is akin to Socrates' "gadfly" function.

Neither the non-pacifist nor the pacifist would be inclined to deny that the problems of war and peace are the greatest which this nation faces. Is it proper then, if the delicate balance of democracy is to survive, to circumscribe "permitted" views by certain philosophical specifications? Can democracy afford to deny anyone's vision now that it faces its greatest challenge?

II. ON LEGISLATIVE GRACE

"Law sharpens the mind by narrowing it."

[illegible]

[illegible]

John Stuart Mill, in [illegible] on Liberty, [illegible] role of free conflict in an open society. The [illegible] of democracy requires the broadest dispersion of the sparks of opinion. Solving the problem wisely in each case involves the process of selection from "the marketplace of ideas" of the best available. This means encouraging a variety of [illegible] dissension. Government cannot [illegible] denial of a specific view will improve the [illegible] and make the ultimate solution less exact. Even rejected and unpopular points of view must be protected. Their presence will be akin to Socrates' "gadfly" function.

Neither the non-pacifist nor the pacifist would be inclined to deny that the problems of war and peace are the greatest which this nation faces. Is it proper then, if the delicate balance of democracy is to survive, to circumscribe "permitted" views by certain philosophical specifications? Can democracy afford to deny anyone's vision now that it faces its greatest challenge?

II. ON LEGISLATIVE GRACE

"Law sharpens the mind by narrowing it."
EDMUND BURKE

The following is the line of reasoning subscribed to by Mr. Smith, judging by the cases he cites in his letter: No one has the constitutional right to exemption from military service. But, as an act of legislative grace, Congress excuses certain conscientious objectors who believe in the Deity. Congress can choose whom it wishes to exempt. The others have no cause to complain. Because conscientious objector status is not a Constitutional privilege, the legislature's granting of

[fol. 147]

exemption to some objectors does not really abridge the rights of those denied exemption. Neither does it frustrate the interest of the framers of the Government for equality before the law for all.

I have no doubt that this line of reasoning would cause some surprise to the early patriots, could they hear it. How can the distribution of privileges, along lines of religious or political belief be considered as other than contrary to our doctrines of freedom and equality?

The Constitution grants no one the right to be exempt from taxation. If Congress, as a matter of legislative grace, exempted all Democrats from taxation, no one would blame the Republicans for objecting on the basis that this frustrates all the carefully designed protections of political freedom and equality. It is true that Republicans are not granted the right to be exempt from taxation by the Constitution, but so is that make such a suggestion any less unconstitutional?

The same argument would be true where a legislature would prescribe certain religious or philosophical beliefs as a prerequisite for certain favors.

The exemption provided for conscientious objectors is a necessary minimal application of justice in a democratic society, but to circumscribe that exemption by specifying what religious beliefs a person must hold to get it is to frustrate the entire spirit in which the Constitution was designed.

III. ON RELIGION AND THE DEITY

> "Vital religion has always suffered when orthodoxy is more highly regarded than virtue; and the Scriptures assure us that at the last day we shall not be examined on what we thought, but by what we did."
>
> BENJAMIN FRANKLIN

Mr. T. Oscar Smith has presented a certain dogmatic test and has declined to recommend a I-O classification because I have failed to fulfill it. In so doing he has selected from my file certain negative statements I made for the purpose of clarification and honesty. I am not prone to stinginess with words. I believe

before the law for all.

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Mr. T. Oscar Smith has presented a certain dogmatic test and has declined to recommend a I-O classification because I have failed to fulfill it. In so doing he has selected from my file certain negative statements I made for the purpose of clarification and honesty. I am not prone to stinginess with words. I believe there is much else that is positive in my remarks and which he has apparently overlooked. Special Hearing Officer Lockwood, in formulating his opinion, did not overlook them. I already have assurances in Mr. Lanza's letter of November 3 that the board will study the entire file, so I will not trouble to repeat them here.

[fol. 148]

As Benjamin Franklin wisely understood, true religious motivation is not something to be identified with specific dogmas and creeds. It is especially important to realize that religious feeling need not have any connection with the supernatural. In fact, through history, the highest kind of religious feeling has occurred when men dared to throw off a burden of historic and dogmatic encumbrances which were fundamentally irrelevant to the problems of life. John Stuart Mill held that the essence of religion is a sense of unity with mankind. According to Auguste Compte "religion ... finds its actual expression in the active service of humanity."

Little can be said to justify a contention that people who do not assert the existence of a divinity beyond the realm of nature are not as devoted to just and humane causes as those who do. The overwhelming majority of thinkers would deny any exclusive identification of belief in supernatural systems with religiousness and right conduct. I will not lengthen an already painfully verbose discourse with extensive quotes to demonstrate the bulk of considered opinion that would contradict the criteria of Mr. Smith and the Universal Military Training Act. I will, however, list them separately (see Appendix).

We are indebted to the great American philosopher John Dewey for the most comprehensive formulation of the character of religious feeling not based on supernatural beliefs. Dewey maintains that any complex of conditions that operate to effect an adjustment in life and a sense of community with mankind is religious. The vehicle for achieving this orientation may be the doctrinal and intellectual apparatus of tracitional religions, it may be poetry, or it may be the imagination of the individual working upon the material and insights gathered from everyday experience.

For Dewey, "any activity pursued in behalf of an ideal end against obstacles and in spite of threats of personal loss because of conviction of its general and enduring value is religious in quality. Many persons, inquirers, artists, philanthropists, citizens, men and women in the humblest walks of life, have achieved, without presumption, and without display, such unification of themselves and of their relations to the condition of existence. It remains to extend their spirit to wider numbers."

motivation is now something to be identified with specific dogmas and creeds. It is especially important to realize that religious feeling need not have any connection with the supernatural. In fact, through history, the highest kind of religious feeling has occurred when men dared to throw off a burden of historic and dogmatic encumbrances which were fundamentally irrelevant to the problems of life. John Stuart Mill held that the essence of religion is a sense of unity with mankind. According to Auguste Compte "religion ... finds its actual expression in the active service of humanity."

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Dewey was an avowed atheist. Yet no one would seriously propose that the dictates of his conscience were less binding on him than in the case of other people or that his right to believe what he thought was unimportant. He himself would be the last to agree that a person's privilege to believe and act as he chooses should be tied up to their supernatural beliefs.

Dewey was a great [illegible] of the democratic ideal and its social contributions to modern philosophy are celebrated throughout the world. This year we are celebrating the one-hundredth anniversary of his birth. Serving on the National Honorary Committee are such distinguished Americans as Chester Bowles, Norbert A. Lyman, A. A. Berle, Jr., and Justices Hugo Black, Felix Frankfurter, and Learned Hand.

Personally, I cannot believe that life derives any meaning from cosmic design but I do believe that person can give his life meaning by doing something worthwhile with it, i.e. by relating his existence in a constructive and [illegible] way to the problems of his social environment. In this sense pacifism, among other things, is for me a transcendent concern and it is in this respect that I consider myself religious.

IV. ON THE SILENCE OF GOD AND THE LOQUACIOUSNESS OF MAN

"The heavens are still; no sound,
Where then shall God be found?
Search not in distant skies;
In man's own heart he lies."
Lin Yutang

Is it not true that Reinhold Niebuhr does bear a subtle resemblance to Reinhold Niebuhr insofar as he projects his own aspirations into the Deity, and is this not also true of Bishop Sheen's concept, and of Al Hasting, of Maritain, and of Buber as well. Men have always attributed the figure of God to enhance their own aspirations and justify their own version of a benevolent cove. The result is a wide variety of contradictions in what people would have us believe is the word of God. A current example is the controversy between Roman Catholics and other Christian churches in the matter of birth control.

The truth of course is that God, if he exists, reveals his wisdom to no one and no one is entitled to pose as a privy-counselor for a Deity. Frequently the word symbol is used to signify value judgments which are emotional or pre-rational. Often this may be good and useful, but sometimes it is applied to the fostering of bad actions for which no justification can be

as such as contributions to modern philosophy are celebrated throughout the world. This year we are celebrating the one-hundredth anniversary of his birth. Serving in the best and noblest traditions of such distinguished Americans as [illegible], Norbert A. Lewis, A. A. Berle, Jr., and Justice [illegible], Felix Frankfurter, and Learned Hand.

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IV. ON THE SILENCE OF GODS AND THE LOQUACIOUSNESS OF MEN

"The heavens are still; no sound.
Where then shall God be found?
Search not in distant skies;
In man's own heart he lies."
CARL YUNG

Is it not true that Reinhold Niebuhr does bear a striking resemblance to Reinhold Niebuhr insofar as he projects his own aspirations into the Deity, and is this not also true of Bishop Sheen's concept, and of Augustine, of Aquinas, and of Buber as well. Men have always utilized the figure of God to enhance their own aspirations and justify their own version of a behavioral code. The result is a wide variety of contradictions in what people would have us believe is the word of God. A current example is the controversy between Roman Catholics and other Christian Churches in the matter of birth control.

The truth of course is that God, if he exists, reveals his opinions to no one and no one is entitled to pose as a privy-counselor for a Deity. Frequently the God symbol is used to justify value judgements which are emotional or pre-rational. Often this may be good and useful, but sometimes it is applied to the fostering of bad actions for which no justification can be found.

I have no particular quarrel with other-worldly religion. I certainly realize that many men have been inspired and sustained in their great and generous work on the basis of a supernatural religious commitment. I will not, therefore, mimic a querulous free-thought tract by enumerating some notorious historical occurrences perpetrated in the name of God. The question, in

[illegible] ...

...

...

in close communion with God can withdraw land from cultivation when children the world over are starving. Not four years ago the present Secretary of Agriculture [illegible] policy. I would say that the Secretary of Agriculture is not a free man. I would say that all officials [illegible] which has at its disposal the power of [illegible] most defacing poverty in the world but who are compelled to pursue such policies as not [illegible] by claiming [illegible] which bears to prove [illegible] enslave the country. [illegible] must be strong to fight totalitarianism.

It is difficult for me to conclude otherwise than that men who, out of fear of totalitarianism, are compelled to withdraw land from cultivation while others starve, are already its slaves. It is true that they can move about as they please and they can vote. But for my part I think I should feel freer in jail than many of my jailors and freer than the Secretary of Agriculture.

VI ON PACIFISM

haiku

here, where a thousand
captains swore grand
conquest...tall
grass their monument
BASHO

Dew evaporates
and all our world
is dew...so dear,
so fresh, so fleeting
ISSA

I would like to conclude with the following well-known remark of Gandhi: "Passive resistance is an all-sided sword; it can be used anyhow; it blesses him who uses it and him against whom it is used. Without drawing a drop of blood, it produces far-reaching results. It never rusts, nor can it be stolen. Competition between passive [illegible] does not exhaust. The sword of passive resistance does not require a scabbard. It is strange indeed that you should consider such a weapon to be a weapon merely of the weak."

I present Gandhi's words here as a small concession to an impulse to discuss the specifics of the non-violent viewpoint. I have sought to confine myself in this paper to the legal and philosophic questions which are relevant to the board's business.

[fol. 150]

the light of these generally known events, is: Since traditional religious causes have encompassed both great good and great evil perpetrated in the name of God, how can citing God be itself considered an indicative factor of the justice or merits of a cause?

V. ON THE UTTERLY FUTILE POSITION OF THE JUSTICE DEPARTMENT AND THE WORTHLESSNESS OF JAILS

"It is a superstitious and ungodly thing [illegible] of a majority binds a minority. Many examples can be given in which laws of majorities will be found to [illegible], and those of minorities [illegible] right. All reforms owe their initiation or minorities in [illegible] majorities."

MOHANDAS GANDHI

However, not even the most orthodox theologian pretends that the existence of God is something which can be "proven". Those who posit the existence of a Deity outside the power of nature usually understand that this is so by mystical perception or faith.

The illusive and non-cerebral nature of the theological concept is granted. Might not one then inquire as to the failure of lawyers and the like demanding that others assent to it, especially considering lawyers' well known reluctance to accept [illegible] facts without the most compelling and [illegible] proof, particularly in matters concerning the good [illegible] of their fellow men.

Any fair fair-minded person will grant that, especially in the [illegible] of Christianity, pacifism is a central tenet of the faith which has been largely forgotten in modern life. God-fearing people who insist that pacifists believe in a Supreme Being are in an unenviable moral position. Thus Mr. Smith and the Justice Department are guilty of harassing people who, for humanitarian reasons, practice in everyday life what they, the Mr. Smiths, for spiritual reasons, will assent to only on the Sabbath.

[fol. 151]

It is difficult to understand how a nation of people in close communion with God can withdraw land from cultivation when children the world over are starving. Not four weeks ago the present Secretary of Agriculture reaffirmed this policy. I would say that the Secretary of Agriculture is not a free man. I would say that all officials of a country which has at its disposal the means of eliminating at least the most degrading poverty in the world but who are conniving to pursue such policies are not free men. They rationalize by claiming said policies necessary to bolster our economy, which needs to provide at a most rapid rate the latest model cars to the community. They rationalize by saying our economy must be strong to fight totalitarianism.

It is difficult for me to conclude otherwise than that men who, out of fear of totalitarianism, are compelled to withdraw land from cultivation while others starve, are already its slaves. It is true that they can move about as they please and they can vote. But for my part I think I should feel freer in jail than many of my jailors and freer than the Secretary of Agriculture.

VI On Fascism

haiku

here, where a thousand
captains swore grand
conquest...tall
grass their monument

BASHO

Dew evaporates
and all our world
is dew...so adorn,
so fresh, so fleeting

Issa

I would like to conclude with the following well-known remark of Landauer: "Revolution is an evil--since it uses; it can be used anyhow; it blesses him who uses it and him against whom it is used. Without spending a drop of blood

101

[fol. 152]

Consequently, I have finished this long discourse without much exposition of my pacifist beliefs, which seems odd, since it appears to me that ultimately the justice of my claim is in their validity.

Daniel A Seeger

Daniel A. Seeger

[fol. 153]

APPENDIX

"The religious geniuses of all ages have been distinguished by this kind of religious feeling, which knows no dogma and no God conceived in man's image; so there can be no church whose central teachings are based on it. Hence, it is precisely among the heretics of every age that we find men who were filled with the highest kind of religious feeling, and were in many cases regarded by their contemporaries as atheists, sometimes also as saints."

ALBERT EINSTEIN

"Religion is the version of something which stands beyond, behind and within the passing flux of immediate things; something which is real, and yet waiting to be realized; something which is a remote possibility, and yet the greatest of present facts; something which is the ultimate ideal, and the hopeless quest."

ALFRED NORTH WHITEHEAD

". . . which in instructing us animates us with basic principles for action, and wholly subjects whatever Scripture may contain for historical faith to the rules and incentives of pure moral faith, which alone constitutes the element of genuine religion in each ecclesiastical faith."

IMMANUEL KANT

"Rejection of creed is not inconsistent with being possessed by a living belief. We have no creed in science, but we are not lukewarm in our beliefs . . . in religion we are repelled by that confident theological doctrine which has settled for all generations just how the spiritual world is worked; but we need not turn aside from the measure of light that comes into our experience showing us a way through the unseen world."

SIR ARTHUR EDDINGTON

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ALFRED [illegible]

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SIR ARTHUR EDDINGTON

"What is hateful to thee, do not to thy fellow man: This is the whole law; the rest is mere commentary."

HILLEL

"Religion means fundamentally faith in a meaningful existence... (this) implies wholeness---the integration of life about a center with radii extending in proper balance to every aspect of life."

GEORGIA HARKNESS

enthusiasm of the people of Texas during the first world war, when most people in this country truly believed we were fighting for the benefit of all mankind, and that out of it would come a beautiful serenity for all the world. Instead we got only the seeds of a greater and more terrible war.

When programs routinely came on television showing scenes from various phases of the last war, I always stressed to my children that the people whose homes had been destroyed were no less virtuous than we, but simply people pretty much like ourselves who wanted only to be allowed to go about their business and raise their families just as we did.

When communists made their strong marches, frequently pointed out the irony of the time said (as it [illegible] an army became a mere determination

of it would come a beautiful serenity for all the world. Instead we get only the seeds of a greater and more terrible war.

When programs occasionally come on television showing scenes from various phases of the last war, I always stress to my children that the people whose homes had been destroyed were no less virtuous than we, but simply people really made like ourselves who wanted only to be allowed to go about their business and raise their families just as we did.

When commentators made their stirring remarks, I frequently found out the irony of the terms used (as in "fanatacism" in an enemy became "hyper determination" in describing the other side of the same coin.)

I differently recall that when there was mention of our love of pure cereal nature, in which category we included Japan, Germany, Russia, and the United States, I wondered that that must sound very

unconvincing as a description to all the little people - who must realize that we ourselves were the first (and I hope forever the only) nation to use an atomic bomb, and that if any other nation had used them first we would most loudly have proclaimed them barbaric.

On another occasion, when we had been discussing a matter of this sort and Daniel (then a very young lad) commented that he thought the solution must be for everyone to just refuse to fight, I recall asking if he thought the man that dropped the bomb was any more responsible for the result than the man who made it or the man who made the machinery to make it etc etc etc And I recall adding "No, Daniel! There is no easy absolution from the collective guilt of mankind."

My son has departed from the formal faith in which he was raised,

if any other nation had used them first we would most loudly have proclaimed them barbaric.

On another occasion, when we had been discussing a matter of this sort and Daniel (then a very young lad) commented that he thought 'the' solution must be for everyone to just refuse to fight, I recall asking if he thought the man that dropped the bomb was any more responsible for the result than the man who made it or the man who made the machinery to make it etc etc etc. And I recall adding "No, Daniel! There is no easy absolution from the collective guilt of mankind."

My son has departed from the formal faith in which he was reared, but not from the ideas that were "crooned to him in the cradle" as we were. The apple has not fallen so very far from the tree, after all.

I love my country greatly, but

[illegible] which have been brought about
[illegible] in the warfare and
[illegible] against the aggressor of
[illegible] Italy. I do not believe
that [illegible] accomplished
[illegible] it useful to our own country or
[illegible] the cause of justice even slightly.

The right quality in our dear of how
peace may be maintained, but on it is on
[illegible] argument that it must be maintained
if the human race is to continue to exist,

Our differences on the subject of
religion and national policy became so
frequent and so heated that he left our
home to avoid involving us in the question,
and [illegible] of his firm determination in the
matter. Such attitudes are so recently
acquired [illegible] dreadful danger doomed merely
to expend a fleeting that many other young
men also found onerous and unpleasant.

[illegible] there. I do not believe
that [illegible] can be accomplished
by [illegible] to our country or
to extend the cause of justice even slightly.

The higher quality in our idea of how
peace may be maintained, but we are in
hearty agreement that it must be maintained
if the human race is to continue to exist.

Our differences on the subject of
foreign and national policy became so
frequent and so heated that he left our
home to avoid involving us in his position,
an index of his firm determination in the
matter. These attitudes are so recently
acquired wardrobe dressings donned merely
to avoid a duty that many other young
men also find onerous and unpalatable.

I like & personally believe that a strong
and well equipped United States determined on
peace but prepared to resist aggression is
essential to prevent the loss of our freedom,
Daniel is just as surely convinced that—
nations which build up large war machine

sooner or later be bound to see them.

Having started our offspring to
themselves, it would be much more comfortable
if we could turn off the furnace when
they had reached conclusions which
most nearly coincide with our own.
But that is not possible, nor in the
interests of progress wholly desirable.
I had no idea when I was expressing
my mind on various matters, just
what the results would be. I might have
been less truthful if I had foreseen the
result.

I have appealed to Daniel on the
score of his own self interest, the reputation
and sanity of our family, and every other
argument I have been able to muster. The
answer is always that he is shocked that
I would suggest that he do what is
expedient rather than what is right!

Much as I deplore his attitudes,

of the world turn off the progress which they had reached conclusions which most nearly coincide with our own. But that is not possible, nor in the interests of progress wholly desirable. I had no idea when I was speaking my mind on various matters, just what the results would be. I might have known how valuable of a tool foreign this result.

I have appealed to Canada on the basis of her own self interest, the reputation and security of our family, and every other argument I have been able to muster. The answer is always that he is shocked that I would suggest that he do what is expedient rather than what is right!

Much as I deplore his attitudes, I know that they are sincere; and I must acknowledge some responsibility in their formation.

Dorothy Leeper

[fol. 160]

GOVERNMENT'S EXHIBIT 34

SELECTIVE SERVICE SYSTEM

Approval of Budget Bureau not required.

Selective Service System
LOCAL BOARD NO. 66
39-01 Main Street
Flushing, N. Y.
(Local Board Date Stamp)

INDIVIDUAL APPEAL RECORD

Name of registrant Seeger, (Last) Daniel (First) Andrew (Middle)

Selective Service Number 50 66 35 620

Classified by local board in Class 1-A until ....., 19....

Date classified Oct. 21, 1958, 19....

☐ Forwarded on appeal taken by registrant

Date forwarded to Appeal Board Jan. 2, 1959, 19....

Jane Finkbeiner
Member or Clerk of Local Board.

NEW YORK CITY APPEAL BOARD
FOR THE SELECTIVE SERVICE SYSTEM
IN THE EASTERN FEDERAL
JUDICIAL DISTRICT - PANEL No. 2
205 East 42nd Street
New York 17, N. Y.

MINUTES OF ACTION BY APPEAL BOARD

Selective Service System
LOCAL BOARD NO. 66
MAY 23 1960

Appeal Board New York 17, N. Y. for the State of 39-01 Main Street, Flushing, N. Y.
(Street and number) (City)

Classified in Class I A until ....., 19....., by the following vote:

Yes 4 No 0 MAY 9 1960

(Date of classification by Appeal Board)

(Local Board Date Stamp)

Name of registrant Seeger, (Last) Daniel (First) Andrew (Middle)

Selective Service Number 50 66 35 620

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Date classified Oct.21,1958, 19....

☐ Forwarded on appeal taken by registrant

Date forwarded to Appeal Board Jan.2,1959, 19....

Jane Fuchs
Member or Clerk of Local Board.

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IN THE EASTERN FEDERAL
JUDICIAL DISTRICT - PANEL No. 2
205 East 42nd Street
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Selective Service System
LOCAL BOARD NO. 66

MINUTES OF ACTION BY APPEAL BOARD

MAY 23 1960

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Flushing, N. Y.
(Street and number) (City)

Classified in Class I A until ....., 19...., by the following vote:

Yes 4 No 0

MAY 9 1960
(Date of classification by Appeal Board)

Percy Friedlander
Member or Clerk of Appeal Board.

INSTRUCTIONS.—The local board will prepare this form in duplicate. The original will be stapled or otherwise securely fastened to the inside of the front cover of the Cover Sheet (SSS Form No. 101) of each file forwarded to Appeal Board, and the copy will be retained in the local board files in lieu of the Registrants' Cover Sheet and attached to the charge-out card.

SSS Form No. 120

U. S. GOVERNMENT PRINTING OFFICE 16 37068-3

[fol. 161] GOVERNMENT'S EXHIBIT 36

May 24,1960

Mr. Daniel A. Seeger,
328 west 89 Street,
New York, 24, New York

Dear Sir: S.S.No.50-66-35-620

We are in receipt of your cover sheet from the Appeal Board and note that in your letter of November 2, 1959 addressed to Mr. Vito F. Lanza, Chairman of the New York City Appeal Board Panel No.2, you requested a personal appearance before the Appeal Board.

Please be advised that Selective Service regulations do not provide for a registrant to receive a personal appearance or interview before the Appeal Board. The Appeal Board determines a registrant's classification based on the information in his file, as well as any advisory recommendation from the Department of Justice and the registrant's reply to the recommendation of the Department of Justice.

For the Local Board,

Member, Local Board 66

[fol. 162] GOVERNMENT'S EXHIBIT 37-A

Daniel H Sceger

[fol. 163] GOVERNMENT'S EXHIBIT 37-C

June 3, 19[illegible]

Col. Paul Akst
Director of Selective Service
for New York City
205 East 42nd Street
New York, New York

Dear Sir:

On May 24, 1960, the Appeal Board here in New York City gave me a 1A classification, denying a request I had made to be considered a conscientious objector.

It is my belief that the appeal board's action could result in a substantial injustice. It would seem that the board incorrectly evaluated my contentions concerning the religious nature of my convictions as I described them in my letter of November 2, 1959.

It is difficult to deal with a contention by letter in matters of such an intimate and personal nature. I had requested permission to testify to the appeal board in person, but unfortunately prescribed procedure does not allow for such appearances. I have enclosed for your perusal a copy of the letter explaining my beliefs to the board.

I would like to point out that the Special Hearing Officer of the Department of Justice who interviewed me expressed a strong opinion that my appeal be granted. I have also enclosed for your information a copy of the Justice Department's recommendation in which Special Hearing Officer Lockwood's remarks are set forth.

It is my firm opinion that the Appeal Board's decision is unjust. In the light of the nature of my convictions, as explained in the enclosed letter, and in the light of the recommendation of the Special Hearing Officer, I would like you to review my case and to order my induction postponed pending your decision. Also I request that you carry an appeal to the President on my behalf.

Col. Paul Hast
Director of Selective Service
for New York City
205 East 42nd Street
New York, New York

Dear Sir:

On May 21, 1960, the Appeal Board here in [illegible] City gave me a 1A classification, denying a request I had made to be considered a conscientious objector.

It is my belief that the Appeal Board's action could result in a substantial injustice. It would seem that the Board incorrectly evaluated my contentions concerning the religious nature of my convictions as I described them in my letter of November 2, 1959.

It is difficult to deal with a committee by letter in matters of such an intimate and personal nature. I had requested permission to testify to the Appeal Board in person, but unfortunately prescribed procedure does not allow for such appearances. I have enclosed for your perusal a copy of the letter explaining my beliefs to the Board.

I would like to point out that the Special Hearing Officer of the Department of Justice who interviewed me expressed a strong opinion that my appeal be granted. I have also enclosed for your information a copy of the Justice Department's recommendation in which Special Hearing Officer Lockwood's remarks are set forth.

It is my firm opinion that the Appeal Board's decision is unjust. In the light of the nature of my convictions, as explained in the enclosed letter, and in the light of the recommendation of the Special Hearing Officer, I would like you to review my case and to order my induction postponed pending your decision. Also I request that you carry an appeal to the President on my behalf.

I will appreciate any efforts you deem proper to expend in this matter. Thank you very much for your attention.

Sincerely,

[illegible] Spagen

[fol. 164] GOVERNMENT'S EXHIBIT 37-D

328 West 89th Street
New York 24, New York

June 3, 1960

Selective Service System
JUN 9 1960
Flushing, N.Y.

...e. Lewis B. Hershey
...ational Director of Selective Service
...[illegible] Indiana Avenue, N. W.
...ashington 25, D. C.

Dear Sir:

On May 24, 1960, the Appeal Board here in New York City gave me a 1A classification, denying a request I had made to be considered a conscientious objector.

It is my belief that the Appeal Board's action would result in a substantial injustice. It would seem that the Board incorrectly evaluated my contentions concerning the religious nature of my convictions as I described them in my letter of November 2, 1959.

It is difficult to deal with a committee by letter in matters of such an intimate and personal nature. I had requested permission to testify to the Appeal Board in person, but unfortunately prescribed procedure does not allow for such appearances. I have enclosed for your perusal a copy of the letter explaining my beliefs to the Board.

I would like to point out that the Special Hearing Officer of the Department of Justice who interviewed me expressed a strong opinion that my appeal be granted. I have also enclosed for your information a copy of the Justice Department's recommendation in which Special Hearing Officer Lockwood's remarks are set forth.

It is my firm opinion that the Appeal Board's decision is unjust. In the light of the nature of my convictions, as explained in the enclosed letter, and in the light of the recommendations of the Special Hearing Officer, I would like you to review my case and to order my induction postponed pending your decision. Also I request that you carry an appeal to the President on my behalf.

. . Lewis B. Hershey
ational Director of Selective Service
ff Indiana Avenue, N. W.
ashington 25, D. C.

Selective Service
1960
Flushing, N. Y.

ear Sir:

On May 24, 1960, the Appeal Board here in New York City gave me a 1A classification, denying a request I had made to be considered a conscientious objector.

It is my belief that the Appeal Board's action would result in a substantial injustice. It would seem that the Board incorrectly evaluated my contentions concerning the religious nature of my convictions as I described them in my letter of November 2, 1959.

It is difficult to deal with a committee by letter in matters of such an intimate and personal nature. I had requested permission to testify to the Appeal Board in person, but unfortunately prescribed procedure does not allow for such appearances. I have enclosed for your perusal a copy of the letter explaining my beliefs to the Board.

I would like to point out that the Special Hearing Officer of the Department of Justice who interviewed me expressed a strong opinion that my appeal be granted. I have also enclosed for your information a copy of the Justice Department's recommendation in which Special Hearing Officer Lockwood's remarks are set forth.

It is my firm opinion that the Appeal Board's decision is unjust. In the light of the nature of my convictions, as explained in the enclosed letter, and in the light of the recommendations of the Special Hearing Officer, I would like you to review my case and to order my induction postponed pending your decision. Also I request that you carry an appeal to the President on my behalf.

I will appreciate any efforts you deem proper to expend in this matter. Thank you very much for your attention.

Sincerely,

DAS/bjs

Daniel A. Seeger

[fol. 165]

GOVERNMENT'S EXHIBIT 43

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
451 INDIANA AVENUE NORTHWEST
WASHINGTON 25, D. C.

OFFICE OF THE DIRECTOR

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

[illegible]

To: [illegible]

Enclosure: Induction Order
Serial No. 50-[illegible]

I hereby appoint to the position of [illegible] the above-named registrant as a member of the Local Board in Class I-A.

Lewis B. Hershey
Director of Selective Service

13 July 1960
Date

[fol. 166]

GOVERNMENT'S EXHIBIT 44

OFFICE OF THE DIRECTOR

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
451 INDIANA AVENUE NORTHWEST
WASHINGTON 25, D. C.

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

JUL 13 1960

Director of Selective Service
for New York City
11th Floor, 205 East 42d Street
New York 17, New York

Selective Service System
LOCAL BOARD NO. 66
JUL 20 1960
39-01 Main Street
Flushing, N. Y.

Subject: Daniel Andrew Seeger
SS No. 50-66-35-620

Dear Colonel Akst:

There has been placed in the cover sheet of the above-named registrant Notice of Appeal to The President by the Director of Selective Service.

Will you kindly advise the local board of the above-mentioned action.

The registrant's current address as shown in the record is 328 West 89th Street, New York 24, New York.

Sincerely yours,

Lewis B. Hershey

DIRECTOR

[fol. 167] GOVERNMENT'S EXHIBIT 48

August 25, 1960

PAB #9410
Seeger, Daniel Andrew
SS No. 30-66-35-620
Local Board No. 66
Flushing, New York

New York City Director of Selective Service
11th Floor, 205 East 42d Street
New York 17, New York

Dear Colonel Akst:

The appeal taken by the Director of Selective Service in the case of the above-named registrant has this date been adjudicated by this Board and the registrant has been classified in Class 1-A by a vote of 3 to 0. The cover sheet and other data have been returned to you, through channels.

Very truly yours,

NATIONAL SELECTIVE SERVICE APPEAL BOARD

By

Edwin J. Dentz
Executive

EJD:ffb

[fol. 168] GOVERNMENT'S EXHIBIT 51

SELECTIVE SERVICE SYSTEM

Approval Not Required

ORDER TO REPORT FOR INDUCTION

[redacted]
(Local Board Stamp)

October 3, 1960
(Date of mailing)

The President of the United States,

To [redacted] [redacted] [redacted] 50 66 35 620
(Last name) (Middle name or initials) (First name) (Selective Service Number)

Mailing address 32[redacted] West 20 St.
(Number and street or R. F. D. route)

New York 24 NY
(City, town, or village) (Zone) (County) (State)

GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report

at [redacted] (Rear Entrance)
(Place of reporting)

at 7:30 a. m., on the 20th day of October, 19[redacted]
(Hour of reporting) (Day) (Month)

for ~~forwarding to~~ armed forces induction station.

[redacted]
(Member or clerk of Local Board)

IMPORTANT NOTICE

If you have had previous military service bring your service records with you. If you wear glasses, bring them with you. Bring proof of your relationship to the person you claim as a dependent if you intend to apply for dependency benefits.

Bring your Social Security Account Number Card with you. If you do not have one, apply at nearest Social Security Administration Office.

This Local Board will furnish transportation to the induction station where you will be examined, and, if accepted for service, you will then be inducted into a branch of the Armed Forces. If you are not accepted for service

The President of the United States,

To [redacted] (First name) [redacted] (Middle name or initial) [redacted] (Last name) 50 66 35 620 (Selective Service Number)

Mailing address 329 East 79 St. (Number and street or R. F. D. route)

New York (City, town, or village) 24 (Zone) [redacted] (County) [redacted] (State)

GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report

at [redacted] (Place of reporting) [redacted], N.Y. (Rear Entrance)

at 7:30 (Hour of reporting) A. m., on the 29th (Day) of October (Month), 19[redacted]

for ~~forwarding to~~ armed forces induction ~~station~~.

[redacted] (Member or clerk of Local Board)

IMPORTANT NOTICE

If you have had previous military service, bring your service records with you. If you wear glasses, bring them with you. Bring proof of your relationship to the person you claim as a dependent if you intend to apply for dependency benefits.

Bring your Social Security Account Number Card with you. If you do not have one, apply at nearest Social Security Administration Office.

This Local Board will furnish transportation to the induction station where you will be examined, and, if accepted for service, you will then be inducted into a branch of the Armed Forces. If you are not accepted, return transportation will be provided.

Persons reporting to the induction station in some instances are found to have developed disqualifying defects since being examined and may be rejected for these or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly at the place specified above and at the hour and on the day named in this Order is a violation of the Universal Military Training and Service Act, as amended, and subjects the violator to fine and imprisonment. You must keep this form and bring it with you when you report for induction. Bring with you sufficient clothing for 3 days.

If you are so far away from your own Local Board that reporting in compliance with this Order will be a serious hardship and you desire to report to a Local Board in the area in which you are now located, go immediately to that Local Board and make written request for transfer of your delivery for induction, taking this Order with you.

SSS Form No. 252 (Revised 5-23-58) (Supplies of previous printings shall be used until exhausted) [redacted]

[fol. 169] GOVERNMENT'S EXHIBIT 52

39 Whitehall Street, New York 4, N. Y.

26 October 1960

United States Attorney
Southern District of New York
U.S. Court House, Foley Square
New York, New York

Dear Sir:

Daniel Andrew Seeger, [illegible] 35 62[illegible], 328 East 79th Street, New York 21, New York, selective service registrant from Local Board 39-66, 39-01 Main Street, Flushing, New York, appeared at this station on 20 October 1960 to be inducted into the Army of the United States, in accordance with the Universal Military Training and Service Act 1951, as amended.

Mr. Seeger, registrant for induction, refused to take one step forward when his name was called by the Induction Officer. He was then informed that his refusal constituted a felony under the provisions of the Universal Military Training and Service Act 1951, as amended, and that conviction of such an offense under the provisions of civil proceedings would subject him to be punished by imprisonment for not more than five (5) years or a fine of not more than $10,000.00 or both. He was then informed again of the imminence of his induction, under the specific language and his name was called by me. Mr. Seeger, persisted in his refusal to be inducted and did not take a step forward. His refusal is based on his membership in an organization called American Friends Service Committee, which he claims opposes induction into the Armed Forces.

Mr. Seeger did not desire to write and sign his own statement.

Very truly yours,

cc: Director, Selective Service
LB 39-66
Mr. Charles Daniel
File

1st Lt, Inf
Induction Officer

Southern District of New York
U.S. Court House, Foley Square
New York, New York

Dear Sir:

Daniel Andrew Seeger, [illegible] Mr. 5[illegible]66 35 6[illegible], 328 [illegible]t [illegible]t, New York 24, New York, Selective Service [illegible]nstrument from Local [illegible] 50-66, 39-01 Main Street, Flushing, New York, appeared [illegible]t [illegible]s [illegible]t [illegible]n on 20 October 1960 to be inducted into the Army of the United States, in accordance with the Universal Military Training and Service Act 1951, as amended.

Mr. Seeger, registrant for induction, refused to take one step forward when his name was called by the Induction Officer. He was then informed that his refusal constituted a felony under the provisions of the Universal Military Training and Service Act 1951, as amended, and that conviction of such an offense under the provisions of civil proceedings would subject him to be punished by imprisonment for not more than five (5) years or a fine of not more than $10,000.00 or both. He was then informed again of the imminence of his induction, under the specific language and his name was called by me. Mr. Seeger, persisted in his refusal to be inducted and did not take a step forward. His refusal is based on his membership in an organization called Moriem Friends Service Committee, which he claims opposes induction into the Armed Forces.

Mr. Seeger did not desire to write and sign his own deposition.

Very truly yours,

[illegible]

cc: [illegible]ir of [illegible] (City
LB 50-66
Mr. Charles Manel
File

[illegible] [illegible] 1
1st Lt, Inf
Induction Officer

[fol. 170]

GOVERNMENT'S EXHIBIT 56

NEW YORK CITY HEADQUARTERS
SELECTIVE SERVICE SYSTEM
205 EAST FORTY SECOND STREET
NEW YORK 17, N. Y.

REFER TO FILE
November 30, 1960 17:ec

Mr. Samuel Rakosi, Chairman
Local Board No. 66
39-01 Main Street
Flushing 54, New York

Subject: Daniel A. Seeger
SS No. 50-66-35-620

Dear Mr. Rakosi:

The file of the above named registrant is returned herewith.

You will note that the Director of Selective Service has determined that this registrant should be reported to the United States Attorney for prosecution as a delinquent. A copy of the Director's letter to this Headquarters dated November 25, 1960, has been placed in the cover sheet.

Kindly prepare and transmit necessary copies of SSS Form 301 to the United States Attorney, Southern District of New York. It is also requested that under Item 5 of the SSS Form 301 you indicate that the Director of Selective Service has determined that this registrant should be reported to the United States Attorney for prosecution as a delinquent in accordance with the provisions of Section 1642.41 of the Selective Service regulations.

For the New York City Director

John J. Horan
Lt. Commander, USNR
Chief, Operations & Legal Division

Encls.

Mr. Samuel Rakosi, Chairman
Local Board No. 66
39-01 Main Street
Flushing 54, New York

Subject: Daniel A. Seeger
SS No. 50-66-35-620

Dear Mr. Rakosi:

The file of the above named registrant is returned herewith.

You will note that the Director of Selective Service has determined that this registrant should be reported to the United States Attorney for prosecution as a delinquent. A copy of the Director's letter to this Headquarters dated November 25, 1960, has been placed in the cover sheet.

Kindly prepare and transmit necessary copies of SSS Form 301 to the United States Attorney, Southern District of New York. It is also requested that under Item 5 of the SSS Form 301 you indicate that the Director of Selective Service has determined that this registrant should be reported to the United States Attorney for prosecution as a delinquent in accordance with the provisions of Section 1642.41 of the Selective Service regulations.

For the New York City Director

John J. Horan
Lt. Commander, USNR
Chief, Operations & Legal Division

Encls.

Selective Service System
LOCAL BOARD NO. 66

DEC 1 1960

39-01 Main Street
Flushing, N Y

120

[fol. 171] GOVERNMENT'S EXHIBIT 61

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Stipulation 62 Cr. 1003

UNITED STATES OF AMERICA,

v.

DANIEL ANDREW SEEGER, Defendant

It is hereby stipulated and agreed, by and between the defendant Daniel Andrew Seeger, his counsel Kenneth W. Greenawalt, Esq., and the United States of America by Robert M. Morgenthau, United States Attorney for the Southern District of New York, and Ezra H. Friedman of counsel as follows:

1. That the defendant is the person named in the indictment.

2. That the Selective Service System Coversheet (S.S.S. Form 101 bearing defendant's name and Selective Service No. 50-66-35-620, which will be offered in evidence at the trial thereof, is the Selective Service file of the defendant and all papers in this defendant's file are contained therein except as stated to the Court on the record.

3. That the defendant Daniel Andrew Seeger was ordered by his Local Board to report for induction into the Armed Forces of the United States on October 20, 1960 at the Armed Forces Examination and Induction Station, at 39 Whitehall Street, New York, N.Y., in the Southern [fol. 172]. District of New York.

4. That the defendant Daniel Andrew Seeger reported at the time and place specified in the aforesaid order.

5. That he refused to submit to induction at the time and place aforesaid claiming that the order was invalid as he had wrongfully been denied exemption as a conscientious objector.

Dated: New York, N. Y., March 27, 1963.

Daniel A. Seeger, Defendant. Kenneth W. Greenawalt, Esq., Attorney for Defendant. Robert M.

Morgenthau, United States Attorney for the Southern District of New York, Attorney for United States of America, By: Ezra H. Friedman, Assistant United States Attorney.

[fol. 173] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1963

UNITED STATES, Petitioner,

vs.

DANIEL ANDREW SEEGER

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—February 19, 1964

Upon Consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 20, 1964.

John M. Harlan, Associate Justice of the Supreme Court of the United States.

Dated this 19th day of February 1964.

[fol. 174] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1963

UNITED STATES, Petitioner,

vs.

DANIEL ANDREW SEEGER

ORDER ALLOWING CERTIORARI—May 4, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 787.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1964 738371 80

Supreme Court of the United States

OCTOBER TERM, 1963

No. 937

UNITED STATES, PETITIONER

vs.

ARNO SASCHA JAKOBSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in the United States Court of Appeals for the Second Circuit		
Appendix to appellant's brief consisting of portions of the record from the United States District Court for the Southern District of New York	1	2
Indictment	2	2
Transcript of testimony (excerpts)	7	4
Colloquy of Court and Counsel	10	4
Statement by Assistant United States Attorney	10	4
Motion to dismiss indictment and for acquittal and ruling thereon	11	5

	Original	Print
Appendix to appellant's brief consisting of portions of the record from the United States District Court for the Southern District of New York—Continued		
Transcript of testimony (excerpts)—Continued		
Testimony of Arno Sascha Jakobson—direct	14	7
Colloquy of Court and Counsel	23	15
Renewal of motion to dismiss indictment—decision reserved	29	20
Colloquy of Court and Counsel	34	21
Opinion, Palmieri, J.	42	22
Judgment and commitment	46	26
Opinion, Friendly, J.	48	27
Judgment	62	40
Order denying petition for rehearing	78	41
Clerk's certificate (omitted in printing)	80	41
Additional record from the United States District Court for the Southern District of New York	81	42
GOVERNMENT'S EXHIBITS:	81	42
No. 24—Special form for conscientious objector with attachment	81	42
No. 25—Letter from Jay Savereid to Selective Service System, dated April 21, 1958	100	58
No. 26—Letter from Robert W. Haney to Selective Service System, dated April 23, 1958	101	59
No. 27—Letter from George New, Director Camp Madison-Felicia to Selective Service System, dated April 22, 1958	103	61
No. 28—Form for "Questions to be answered by a registrant claiming to be a conscientious objector and/or minister of religion" with attachment	105	63
No. 31—Letter from Arno Jakobson to Selective Service System dated December 9, 1958	112	70
No. 32—Registrant's "Notes on Religion"	115	72

	Original	Print
Additional record from the United States District Court for the Southern District of New York—Continued		
GOVERNMENT'S EXHIBITS:—Continued		
No. 33—Summary of hearing on December 9, 1958	158	116
No. 35—Government Appeals Agent's statement of the respective positions of registrant and Local Board	161	118
No. 40—Letter from United States Department of Justice to Chairman, Appeal Board, dated March 16, 1960	162	120
No. 41—Resume of the Inquiry re: Arno Sascha Jakobson	166	124
No. 42—Registrant's statement submitted to Special Hearing Officer on August 19, 1959	169	127
No. 45—Registrant's letter to Appeal Board in reply to the Department of Justice recommendation	171	130
No. 47—Registrant's request that National Director of Selective Service take an appeal to the President on his behalf	179	136
No. 55—Letter from Arno Jakobson to Selective Service System	182	139
Order extending time in which to file petition for writ of certiorari	184	142
Order allowing certiorari	185	143

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 28137

UNITED STATES OF AMERICA,
Appellee,

against

ARNO SASCHA JAKOBSON,
Defendant-Appellant.

APPENDIX TO APPELLANT'S BRIEF

(File Endorsement Omitted)

• • • •

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

62 CR 1037

THE UNITED STATES,

vs.

ARNO SASCHA JAKOBSON

---

* * * *

[fol. 2]

INDICTMENT—Filed November 26, 1962

The Grand Jury charges:

On or about the 8th day of December, 1960, in the Southern District of New York, Arno Sascha Jakobson, the defendant, being a registrant under the Universal Military Training and Service Act, Title 50 Appendix, United States Code, Section 451, *et seq.*, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of said Act and the rules and regulations and directions made pursuant [fol.3] thereto, to wit, to submit to induction at the time and place fixed in an Order to Report for Induction mailed him by his Selective Service System Local Board.

(Title 50, Appendix, United States Code, § 462; 32 Code of Federal Regulations, Section 1632.14.)

CARL M. SPERO,
Foreman.

/s/ Vincent L. Broderick,
VINCENT L. BRODERICK,
United States Attorney.

ENDORSEMENTS ON INDICTMENT

* * * *

INDICTMENT

Viol. T. 50, App., U. S. C. § 462, 32 Code of Federal Regulations, § 1632.14.

VINCENT L. BRODERICK,
United States Attorney.

A TRUE BILL
CARL M. SPERO,
Foreman.

[fols. 4-6] * * *

[fol. 7]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

62 Cr. 1037

Before:

HON. EDMUND L. PALMIERI, *District Judge.*

New York, February 11, 1963,
10 o'clock a.m.

Appearances:

ROBERT M. MORGENTHAU, Esq., United States Attorney, for the Government, by EZRA H. FRIEDMAN, Esq., Assistant United States Attorney.

HERMAN ADLERSTEIN, Esq., Attorney for Defendant.

TRANSCRIPT OF TESTIMONY

* * * *

[fols. 8-9] * * *

[fol. 10] COLLOQUY OF COURT AND COUNSEL

* * * *

STATEMENT BY ASSISTANT UNITED STATES ATTORNEY

There apparently is a dual holding by the Appeal Board, because one cannot tell from the Appeal Board record, which classified the defendant 1-A, as to which of two grounds suggested to it by the Department of Justice it was following. I do not know whether it was one or whether it was both.

* * * *

[fol. 11]

MOTION TO DISMISS INDICTMENT AND FOR ACQUITTAL AND RULING THEREON

Mr. Adlerstein: The defendant moves to dismiss the indictment and for acquittal of the defendant for the following reasons:

One. The classification of 1-A is without basis in fact:

(a) There was no evidence in the record against the conscientious objector claim;

(b) The Board wrongfully interpreted section 6(j) of the Draft Act in holding that the beliefs of the defendant were not religious training and belief under the statute.

In that connection I would like to refer the Court to the unreported case of United States v. Horst, which I would like to hand up in connection with my reply memorandum to the government's trial brief (handing to the Court).

Two. The recommendation of the Department of Justice to the Appeal Board, that the defendant was not opposed to participation in war in combatant or noncombatant military training and service by reason of his religious training and belief, but that his claim was based upon a personal moral code, was erroneous, as a matter of law, and this voids the classification of the defendant. A reading of the file shows defendant's beliefs were religious training and belief within the Act. The defendant based his conscientious objection to war upon belief in a Supreme Being, and that was all the Act required.

(a) The additional recommendation that the defendant was not sincere in his conscientious objector claim gave the Appeal Board an alternative ground for classifi-
[fol. 12] cation. Since the Appeal Board did not indicate on which ground it made the classification, the classification cannot stand in the face of the erroneous recommendation;

(b) There was another further erroneous statement in the recommendation that the defendant made his conscientious objector claim on the day he received notification of acceptance by the military. This was wrong

because the defendant made his conscientious objector claim about one month after receiving notice of acceptance. The Department of Justice tried to impress the Appeal Board that the defendant was trying to evade service by holding ready an alternative claim to be filed at once when he got his 1-A. This was prejudicial.

Three. The Department of Justice made an erroneous recommendation to the Appeal Board that the defendant was insincere in his claim. It based the recommendation on the defendant's statement that he had not given much consideration to his conscientious objector views until he passed his physical, and until then he had frankly hoped he would be classified 4-F.

The record shows defendant made a claim for physical disqualification in form 100, the classification questionnaire, series 15, because of a back injury. The Army medical examination shows defendant had a condition called spina bifida, and also kyphosis. The former is a serious condition. The Army medical report referred to two reports of private physicians dealing with the defendant's claim and condition.

Under the law, if registrant's claim is honest and made in good faith, he may make as many successive claims for deferment as he has. The fact of the defendant having made the claim for a physical disqualification and then for a conscientious objector classification should not give any grounds for suspicion of an attempt to evade [fol. 13] service, because the two claims were made in good faith and were honest.

The Court: You are not now pressing the medical claim, are you?

Mr. Adlerstein: I am trying to show your Honor that the claim was made in good faith, and that there was an improper recommendation that the claim was not made in good faith. I am trying to show it was a wrongful recommendation made by the hearing officer and the Department of Justice.

The Court: What is the relevance of the medical findings so far as the issues in this case are concerned?

Mr. Adlerstein: I am trying to show that the claim was not insincere. The Department of Justice said it was an

insincere claim because he had hoped to get a disqualification: I am trying to show that, even though he hoped to get a disqualification, he had a right to do that because he had made a sincere claim for a back condition even though the Army did later on accept him; that his claim was made in good faith and the record shows it, and therefore they had no ground for a finding of insincerity on his part.

The Court: I see.

Mr. Adlerstein: The findings of insincerity were based on suspicion. The Local Board has seen and heard the registrant, and found him sincere. The entire record shows the defendant's sincerity. Any other finding is based upon suspicion.

The fourth and last ground. The defendant was denied due process of law when he asked a clerk of the Local Board what the qualifications were for a conscientious objector status. The clerk informed him that one must have a long background of conscientious objection and get references from clergymen. This delayed the defendant in making his claim until after he passed his [fol. 14] physical examination, and caused the hearing officer to report that the defendant was insincere in making his conscientious objector claim on the ground it was made after the physical examination was passed, and these are my grounds for dismissal and acquittal of the defendant.

I have submitted a trial memorandum in reply and hope your Honor will read the cases in connection with that.

The Court: I reserve decision on your motion.

Mr. Adlerstein: I would like to put the defendant on the stand and ask him some questions, your Honor.

The Court: All right.

ARNO SASCHA JAKOBSON, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Adlerstein:

Q. Mr. Jakobson, how old were you when you filed your classification questionnaire?

Mr. Friedman: Objection, your Honor. I believe the file is in evidence with evidence of his date of birth and all the other relevant—

The Court: For the purpose of saving time I suppose he might just as well state it. Overruled.

A. I was 18 years old.

Q. Did you at that time have a back condition? A. I did.

Mr. Friedman: Objection, your Honor. This is also in the record, and I might state at this time [fol. 15] that there is no claim made by anyone throughout the entire Selective Service proceeding that the claim of a back ailment was a phony one or that it was in any way untrue.

The thrust of the decision was that the defendant, although he knew how to make a claim on one ground, has failed or neglected to make the more important conscientious objector claim. There is no hint in the record that anyone suspected the defendant of claiming a back ailment that he did not have.

The Court: Do you disagree with your adversary to the effect that this is relevant on the question of good faith?

Mr. Friedman: In more ways than one, yes, sir. Absolutely.

The Court: Let me hear your position first on the good faith basis, and then on the other ways in which you think it is irrelevant.

Mr. Friedman: I think if your Honor reads the record you will find that there is no implication by anyone passing on his claim that he made a false claim for exemption by reason of physical disability. It just isn't so. What they are saying is, here is a man who knew how, when he had a claim with some basis in it, to make it. He brought in doctors' certificates, he pressed it from the time when he was eighteen, and he filed his original papers all the way through to the end. Each time he went to the examining station he brought it to the medical examiner's attention once again.

The question is the sincerity of his conscientious objector claim, which is, on the one hand, claimed to be of long standing, and here he sits back and waits four and a half years to make it, and it is [fol. 16] the comparison of his pressing one claim and not pressing the other. There is no implication whatsoever, as I read the record, that they are accusing him of making a bad-faith disability claim, and therefore carrying that over and saying therefore his claim for exemption is in bad faith as well.

As I say, this is the way I read the record, and I speak, I believe, for the government on this. I just do not find anything whatsoever in the record that would indicate that that was the thinking. The thinking is that he sat back and he did not make claim for conscientious objection, which, if we take his view as expressed in the record, should have been uppermost in his mind and should have been pressed more strongly.

The Court: This record has been presented to me for the first time this morning, and I am not familiar with it. I will give you a continuing objection to this line of questioning and I will reserve to you the right to move to strike out any of this testimony.

Mr. Friedman: I would say further in a broader sense, your Honor, that the sincerity is not an issue which is open to your Honor because you are reviewing proceedings before a board or a system, an agency, and their findings are conclusive even though, your Honor, you or I or anyone else might disagree with them.

There is a very narrow scope of review on the factual issue, and it must be clearly and absolutely arbitrary and capricious, and the fact that you and I, in weighing the evidence, might come to a contrary conclusion just does not help. The sincerity aspect is closed by the Board finally, unless it is absolutely without basis in fact.

[fol. 17] The Court: I take it your position is there was no basis in fact for the Board's finding; is that right?

Mr. Adlerstein: I do make that claim, in addition to erroneous interpretation of the statute, and also I would like to call your Honor's attention to page 3 of the Department of Justice recommendation at the bottom of the page.

The Court: What exhibit is that?

Mr. Adlerstein: Government's Exhibit 40, I think.

The Court: I have it.

Mr. Adlerstein: At the bottom of page 3, this is a recommendation of the Department of Justice to the Appeal Board, and the report is that the registrant told the hearing officer that he had delayed filing his form 150 because he had not given much consideration to his views on conscientious objection or thought them through until he had passed his physical examination, and that until then had "frankly hoped I would be a 4-F." Your Honor will note that that is quoted, "frankly hoped." He follows this up with a statement on page 4 that the registrant was not sincere in his claim.

So that the record does show that his physical disqualification was made a ground of insincerity and that is the reason I am trying to show that he had an honest claim in presenting his physical disqualifications.

Mr. Friedman: If that is the case, I can cut things short. We will concede that there was an honest claim. I just read that entire section that has been read to your Honor entirely different.

The Court: Yes. All right. I will take this into consideration, but in view of my lack of familiarity with the record I prefer to give the
[fol. 18] defendant as much breadth of opportunity to testify as possible and permit you to move to strike out, if necessary.

Mr. Adlerstein: In connection with that I would like to say that I have cited cases in my trial memorandum to show that a registrant can make as many successive claims as he has as long as they

are honest claims and that this should raise no grounds for suspicion. That is a question of law and not a question of basis in fact.

By Mr. Adlerstein:

Q. Mr. Jakobson, before you went for your physical exaamination in February, 1958, did you concult with the clerk of the Local Board? A. Yes, I did.

Q. How long before that time did you consult with the clerk? A. Approximately six months before that time.

Q. Will you tell the Court what was the substance of your conversation.

Mr. Friedman: Objection, your Honor. This, too, appears in the record in the course of the registrant's reply to the Department of Justice recommendation which he filed with the Appeal Board.

The question of what the clerk may have told him, what effect it may have had on his behavior, and what inferences might be drawn from his behavior, was before the Appeal Board and was passed on by them and when it comes to a question of weighing inferences, that function is for the Appeal Board and not for the Court.

The Court: Isn't that so? This would be superseded by the record before the Appeal Board, and he is in no position now to amplify or modify that record, is he?

[fol. 19] Mr. Adlerstein: We are not trying to modify the record. I am just trying to bring out the entire conversation. I just want to say this, your Honor: He is not an attorney and—

The Court: I realize that. He has had an administrative hearing and adjudication. You are attacking the validity of that administrative adjudication. At this point have you the right to amplify or supplement the basis upon which the administrative agency acted? The United States Attorney is objecting because you are apparently seeking to do just that.

Mr. Adlerstein: As I said, this man, not being an attorney, did not know how to express him-

self completely in the reply to the recommendation, and I just want to clarify it for the record.

The Court: Clarify it for what record? There is only one record before me at this point which is of significance, and that is the record that was made through to the Appeal Board which rejected his claim.

If you will point out to me the exhibit which you have special reference to, I can better understand what you are trying to do. My disposition is not to allow you to do this.

Mr. Adlerstein: This is Exhibit 45, page 4, under subdivision 2.

The Court: Exhibit 45 is a long, typewritten statement filed by the defendant—

Mr. Adlerstein: I call your Honor's attention to page 4.

The Court: —in which he seeks to refute the position of the Department.

Mr. Adlerstein: These are under the regulations. He has a right to reply. This is his reply to the recommendation.

[fol. 20] The Court: Doesn't he stand on these any longer?

Mr. Adlerstein: Oh, yes, it is part of the file. We do stand on this.

The Court: What is the purpose of the present questioning?

Mr. Adlerstein: I do not think he has here the entire conversation he had with the clerk of the Board. He called the Appeal Board's attention to it, and I wanted to show the entire conversation that took place. It is a matter of due process of law, in my opinion, and that is why I want to have the record amplified and explain the entire situation.

The Court: Yes?

Mr. Friedman: Number one, your Honor, I feel that it was brought by this reference to the attention of the Appeal Board. If at this time the defendant is going to be allowed to go out and expand the conversation as to what happened, and so on and so

forth, he is putting evidence before you which was not before the Appeal Board; and, as I understand the law, the function of the Board is not to try these issues de novo. The registrant had an obligation to place his information before the Appeal Board and he did so.

Now he is coming back for a second shot saying, "Maybe I didn't do a good enough job," and I don't think he can do that before you. I do not think he can wait until the criminal prosecution to say that. The obligation of pressing a claim and of producing evidence to satisfy is upon the registrant, and the person he must satisfy is not the United States Attorney nor the United States Court, he must satisfy the Local Board; where there is an appeal the Appeal Board, and if there is an appeal to the Pres-
[fol. 21] ident, which there was not in this case, then the Presidential Appeal Board.

We are just going in and trying to introduce more evidence which should have been brought before them, which might have weighed before them or might not have weighed before them. We are being asked at this time to hear the case de novo.

The Court: I notice that in this Exhibit 45 defendant does charge the clerk with having misinformed him and having insufficiently informed him. However, I prefer to take his testimony rather than to reject it, because my lack of thorough familiarity with the record places me at a disadvantage.

You can move to strike out, and I will reserve decision on your motions later.

All right. Read the pending question.

(Question read.)

A. May I answer?

Q. Yes. A. I told Mrs. Cobbs that I had come there to ask her to explain to me the nature of the conscientious law, especially with regard to the religious qualification, as I was opposed to participation in the military.

She replied that in order to qualify for conscientious objector classification one has to belong to one of several accepted pacifist religions, and one has to submit proof to

the Local Board that one has belonged to such a religion for a long period of time, say, from the age of three, was her words, and that this proof was to consist of letters from ministers and so forth.

Q. Did you accept the clerk's word on that? A. Yes, I did.

Mr. Friedman: Your Honor, as I understand your instructions, you do not want to hear any objections from me?

[fol. 22] The Court: You have a continuing objection to this whole line of questioning, and you may move later to strike out.

Q. Was it later that you made inquiry of some group as to whether you had a valid claim? A. Yes, I did.

Q. When did you make that inquiry? A. Shortly after the physical examination, at the offices of the American Friends Service Committee. They informed me that there were no such restrictions as to the law regarding the religious qualification, and that I had a possibility for making a valid claim on this point.

Q. You submitted a 43-page statement, apparently, on your religious beliefs to the Local Board in connection with the claim for conscientious objection. That statement refers to a reading of Sorokin, who refers to the Sermon on the Mount. In connection with that reading, did you also read the Sermon on the Mount? A. Yes.

Mr. Friedman: Objection, your Honor.

The Court: Overruled.

Q. In the same 43-page statement you preferred to the Book of Joshua. Had you read that? A. Yes, I did.

Q. Had you read other parts of the Old Testament as well? A. Yes, I did.

Mr. Adlerstein: That is all.

Mr. Friedman: I have no questions of the registrant, your Honor.

In view of the government's position that his entire testimony is irrelevant and immaterial to the issues, accordingly, I would move to strike.

[fol. 23] COLLOQUY OF COURT AND COUNSEL

Mr. Adlerstein: I would like to say this in that connection, your Honor: I am raising the question of due process of law, and that I would like to call the Court's attention to the decision in Simmons v. United States, in 348 U. S., that a registrant not represented by counsel is not to be treated as if he were engaged in litigation represented by counsel, and I think the Court is more lenient when it comes to a question of due process as to not requiring a defendant to know all the procedures under the law.

The Court: On what basis do you attack due process in this case?

Mr. Adlerstein: I said on the basis of the erroneous information given by the clerk of the Local Board to the registrant which finally culminated in his being charged with insincerity, because he made a late claim. The improper information caused the claim to be made at the time it was, and that was after he had passed his physical examination.

The Court: You concede, do you not, that when he was before the Appeal Board he placed all of the facts before them? He did not withhold any relevant facts at that time, and that he was not acting at that time under any misapprehension?

Mr. Adlerstein: I do not think he was, your Honor.

The Court: Isn't that the test as to whether he was deprived of due process before the Appeal Board, which has the ultimate legislative mandate to make decisions in these matters?

Mr. Adlerstein: They pass on the question of fact. I do not think they pass on questions of law. I think it is for the courts to pass on the question of whether he was deprived of due process.

The Court: Yes, of course, they do not pass on whether he got due process, that is our job, but I would like to [fol.24] know what it was that occurred before the Board which, in your opinion, vitiated its proceedings because of lack of due process. At that time he knew all the facts, he presented all the facts to the Board, did he not? He

was not then laboring under any mistake or misapprehension; isn't that so?

Mr. Adlerstein: He did present his claim eventually, but the fact of his presenting it at a later time, when he would have presented it, or than he would have presented it, caused a charge of insincerity to be made by the hearing officer and Department of Justice. The erroneous information caused that charge of insincerity to be made.

I have expanded on that in my trial memorandum, and I am pretty sure your Honor will see the point that I am trying to make by reading that and the cases which I cite along with it. I do not say we were denied any procedures, but I do say that the wrong information caused a substantial harm to be done.

The Court: You say because of the misapprehension he might have acted in a way which would not have given the impression of insincerity?

Mr. Adlerstein: That is right.

The Court: He might have acted in a way which might have given an impression of sincerity?

Mr. Adlerstein: That is right.

The Court: That does not dispose of the conclusion of the Appeal Board, does it? Because they did find on an independent ground, did they not, that his refusal to be inducted was not well taken.

Mr. Adlerstein: That was not well taken, your Honor.

The Court: That his refusal to be inducted was not well taken or that his claim of conscientious objection was not well taken?

[fol. 25] Mr. Adlerstein: The Appeal Board had alternative grounds to decide the case on and did not indicate on which ground they decided. It was a question of insincerity and also a question of lack of religious training and belief.

The Court: In other words, they felt that there was an insufficiency of proof to indicate, to their satisfaction, that he was in fact a conscientious objector; isn't that what they concluded?

Mr. Adlerstein: I think they misinterpreted the law.

The Court: I am trying to find not what you think they did was wrong at this point. I am trying to find out what in fact they did.

Now, they rested their conclusion on a dual ground. One is insincerity, and you have spoken about that. The other, as I understand it, was a lack of proof that he was in fact a conscientious objector. Isn't that so?

Mr. Adlerstein: It is very difficult to say that, your Honor. A person can be deemed to be not a conscientious objector for lack of submission of proof, but also because of a wrongful interpretation of the law. He may have sufficient proof but, by wrongful interpretation of the law and application of the law to the facts, they might make an erroneous decision, and I say that this is the thing it came under, the erroneous decision, by erroneous interpretation of the law.

The Court: What exhibit is the decision of the Appeal Board? What exhibit is the decision?

Mr. Friedman: Your Honor, the Appeal Board does not have a memorandum of decision. What it has is just its order, which will appear—

Mr. Adlerstein: I think it is 46.

Mr. Friedman: 46. It is a single-page sheet of paper, an SS form 120.

[fol. 26] The Court: You gentlemen have talked at considerable length of the dual ground upon which this decision was based, and there must be some basis upon which you have made these arguments. Where does it appear that the Board rested on the dual ground?

Mr. Adlerstein: There is nothing to show what it rested on. It merely made a classification after the recommendation, but the recommendation of the Department of Justice, which preceded the classification of the Appeal Board, stated a dual ground.

The Court: Where is that? What exhibit is that?

Mr. Friedman: Exhibit 45. I believe your Honor had that before him.

Mr. Adlerstein: Exhibit 43.

Mr. Friedman: 43 or 45?

Mr. Adlerstein: 43.

Mr. Friedman: No, 45.

Mr. Adlerstein: Your Honor, that is Exhibit 40. That is the recommendation. If your Honor will look at page 4 of that exhibit, it states two grounds.

The Court: Yes, I have read this. What is it that you say in connection with that exhibit?

Mr. Adlerstein: In connection with that, there were two grounds for denial of the classification recommended by the Department of Justice. The Appeal Board made the classification without referring to which ground it decided upon.

If the recommendation as to the denial on the ground of lack of religious training and belief is erroneous, then the entire classification must fall. I cited cases in my trial memorandum on that point.

Since the Appeal Board did not decide the ground, it cannot be assumed on which ground they made their classification. Therefore, the classification is void, since [fol. 27] we contend that there was an erroneous interpretation of the statute as to the meaning of religious training and belief.

The Court: What is your answer to that argument, Mr. Friedman?

Mr. Friedman: Do I understand your Honor's question as being directed to what happens if your Honor should find that there was an erroneous interpretation of law? Is that it?

The Court: No. I found nothing and I have decided nothing. Your adversary has just made an argument with respect to an exhibit and I do not want to repeat his argument. I assume you heard it, I would like to know what your answer is to that argument.

Mr. Friedman: As I understood it is directed to the question of the dual finding, what we have been calling the dual finding, by the Appeal Board based upon the Department of Justice recommendation.

I am inclined to agree with defense counsel that should your Honor ultimately arrive at the conclusion that the Board interpreted the law incorrectly, that he would disregard the sincerity or lack of sincerity finding and would reverse, because it is not clear on which ground the Appeal Board rested.

I think, however, that your Honor will come to the conclusion that, if it is a question of law as to whether this was a religious claim, the Board's decision was correct

and that, as a matter of fact, it was not a legal conclusion that was reached by the Department or by the Appeal Board in holding this to be a personal moral code or philosophy but a factual determination, in which case the same restrictive scope of review comes into play.

But if it should be your Honor's ultimate determination that this was a legal conclusion by the Appeal Board, that this was not a religious claim—by "legal" I mean a [fol. 28] judicial determination, a construction and interpretation of the statute—that this was not a religious claim, and if your Honor arrives at a contrary conclusion, I think the finding of the Board would have to be reversed. I am not certain that I have answered your question.

The Court: If a difficulty in this case arises from the fact that we do not know on which ground the Board rested, why couldn't the case be sent back to them for the purpose of clarifying their decision?

Mr. Friedman: I think the government's position has to be that the Board's decision as it stands was correct and entitles it to a verdict of guilty. If, on the other hand, there is a fatal defect in the decision as it stands, then the defendant is entitled to his acquittal.

Mr. Adlerstein: I have cited a case in my trial memorandum which says that the case would not go back, but that it should be sent back de novo for the reason that it might be impossible for the Appeal Board at this time to give its reason for that decision.

Mr. Friedman: If the Court finds that the order was valid, then the defendant's refusal to submit was a criminal act. If, on the other hand, the Court cannot find beyond a reasonable doubt that it was a valid order, then the defendant is entitled to his acquittal.

I think both counsel will agree that the vagueness of the decision without specifying grounds puts the Court in somewhat of a predicament. I think, however, that the government's arguments set forth in the memoranda will show that the Board's order, resting on either ground or both grounds, was a valid one.

The Court: Does either side wish to introduce any further evidence? Do you wish to cross-examine the defendant?

Mr. Friedman: No, your Honor. I feel that the defendant's testimony was immaterial to the issues in this [fol. 29] case, and I would move to strike it, and I do not wish to cross-examine the defendant.

The Court: I will reserve decision.

RENEWAL OF MOTION TO DISMISS INDICTMENT—DECISION RESERVED

Mr. Adlerstein: The defendant rests and renews the motion made at the end of the government's case to acquit the defendant.

The Court: I reserve decision.

Will you gentlemen wait for just a minute? I may have some questions to ask you about this voluminous record that I would like to look at hurriedly during the recess, and I will talk to you.

(Short recess.)

The Court: Gentlemen, I will require some more time to study these papers and I will, therefore, adhere to my decision to reserve decision. But I would like to ask one or two questions about these proceedings of defense counsel.

Do I understand correctly that at one point the defendant was classified for non-combatant service and that he appealed from that decision?

Mr. Adlerstein: That is correct.

The Court: Do you dissent from the view that the function of the District Court in these cases is not to make a finding de novo, but to inquire as to whether there is valid evidence to sustain the conclusion of the Appeal Board?

Mr. Adlerstein: I think that is a correct statement. The Court cannot classify. The Court merely decides whether or not the classification is valid.

The Court: And the classification cannot be overturned where the Court finds that it has some basis in fact, isn't that the law?

Mr. Adlerstein: If the Court finds there is basis in fact, then the classification must stand, unless it finds also some error of law which might set aside the classification.

[fol. 30] The Court: Do you concede that the defendant was furnished a resume of the Federal Bureau of Investigation report prior to the hearing?

Mr. Adlerstein: Yes, we were furnished that report.

The Court: Do you concede that he was also furnished with a copy of the Department of Justice's recommendation and afforded an opportunity to reply before the decision of the Appeal Board.

Mr. Adlerstein: That is conceded.

The Court: All right, gentlemen. Thank you very much. I will reserve decision.

Mr. Adlerstein: Would your Honor continue the defendant on his own recognizance?

The Court: Yes.

Mr. Friedman: No objection.

Mr. Adlerstein: Thank you.

* * * *

New York, February 26, 1963,

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[fols. 31-33] * * *

[fol. 34] COLLOQUY OF COURT AND COUNSEL

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The Court: You mean they could not recognize him as a conscientious objector because he did not come within the terms of law which say: You have to belong to a sect. He has his own personal philosophy. He could not comply with the provisions of the law as it now stands.

* * * *

Mr. Adlerstein: Actually, he was given the noncombatant classification from which he appealed. He was appealing for the I-O instead of I-A-O classification.

The Court: And he did not want that?

Mr. Adlerstein: No, he refused to take it.

The Court: Would he be willing to accept that now?

Mr. Adlerstein: As a matter of principle, I do not see how he could.

The Court: Do you agree with his principles, or are you just trying to explain that he has got to continue to be adamant in this subject.

[fol. 35] Mr. Adlerstein: I do not think that is the question, your Honor. I do not think he is trying to be adamant. I think if a man has a principle he should stand by it.

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[fols. 36-41] * * *

[fol. 42]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

OPINION OF PALMIERI, J.—February 21, 1963

In December of 1960, defendant Arno Sascha Jakobson, claiming to be a conscientious objector, refused to submit to induction into the armed forces and was indicted by the Government under Section 12 of the Universal Military Training and Service Act.[1] Defendant pleaded not guilty, and having waived trial by jury, was tried before this Court. The record established that defendant first registered with his draft board in 1953 at the age of eighteen. He made no claim to exemption as a conscientious objector, but did note certain physical infirmities on his Selective Service classification form that, in his opinion, would disqualify him from military service. After receiving several students deferments, he was classified I-A in 1956.

In February of 1958, defendant was ordered to report for a physical examination and was notified the following month of his passage of the examination. Shortly thereafter, and for the first time, he applied as a conscientious objector for exemption from combatant service (I-A-O). When he appeared before the Local Board in December of 1958 for a hearing on this application, he advised the Board that he could not accept a I-A-O classification and requested exemption from both com-

[1] 50 U. S. C. App. § 462.

batant and non-combatant service (I-O). The Board did not believe that defendant's beliefs were based upon religious training and belief, as required by the statute for such exemption, and denied the I-O classification. The Board did, however, grant defendant an exemption from combatant service.

Defendant appealed this decision to the Appeal Board. That Board took the preliminary view, in agreement with [fol. 43] the Local Board, that there was no merit to defendant's claim for deferment based on "religious training or belief" and forwarded defendant's file to the Department of Justice for an advisory recommendation. As part of this procedure, a background investigation was conducted by the FBI and defendant was accorded a further hearing before a Hearing Officer, who later reported his conclusions that defendant's claim was based upon a personal moral code rather than religious training and belief, and that defendant was not sincere in his claim. The Department of Justice then recommended that defendant's claim not be sustained by the Board. The Appeal Board not only refused to grant defendant's application for I-O status, but reclassified him from I-A-O to I-A, the classification defendant held when he later refused to submit to induction. The Director of Selective Service refused to authorize an appeal to the President from the Appeal Board's decision.

The issues in this case relate solely to the Appeal Board's determinations, defendant contending that they are without basis in law or fact. First, as to the Board's finding that defendant was insincere in his claim,[2] it must be noted that the function of this Court is not to

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[2] Actually, it is not altogether clear that the Board did adopt the Hearing Officer's finding that defendant was insincere, although its reclassification of defendant from I-A-O to I-A suggests that such was the case. However, since the Board gave no reasons for its decision, thus leaving open the possibility that an improper recommendation might have influenced, and therefore rendered invalid, its decision, see *Sicurella* v. *United States*, 348 U.S. 385, 391-92 (1955), *United States* v. *Erikson*, 149 F. Supp. 576, 578-80 (S. D. N. Y. 1957), the Court will assume that the Board found defendant insincere and consider the issue on the merits.

conduct a trial *denovo* on this issue. The Court must recognize and give effect to the Board's determination as long as there is any basis in fact for the Board's find- [fol. 44] ing.[3] There is much in the record that indicates that defendant was sincere in his claim, as the Local Board initially found.[4] On the other hand, it cannot be denied that defendant delayed for some time before making known his conscientious objector feelings, at first only requested exemption from combatant duty and conceded that until he had passed his physical examination he had not given much consideration to his views or thought them through. In view of these facts and considering the record as a whole, the Court cannot say that there was no basis in fact for the Appeal Board's finding of insincerity. See *Witmer* v. *United States*, 348 U. S. 375 (1955); *United States* v. *Corliss*, 280 F. 2nd 808 (2d Cir.), *cert. denied*, 364 U. S. 884 (1960).

The second issue relates to the finding that defendant's claim was not based on religious training and belief, as required by the Act. Section 6j,[5] the conscientious objector section, specifically provides that:

> Religious training and belief * * * means an individual's belief in a relation to a Supreme Being

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[3] *Dickinson* v. *United States*, 346 U.S. 389, 394 (1953).

[4] The FBI report indicates that all of the individual interviewed who felt qualified to comment on the sincerity of defendant's claim expressed the view that it was sincerely made. In addition, defendant placed on the record before the Hearing Officer and the Appeal Board the fact that he had been informed by the clerk of his Local Board about six months before his physical examination in 1958 that he did not qualify for a conscientious objector exemption. Defendant later found out from others that he might qualify, at which time he filed his claim. There is no merit to defendant's argument that the misinformation given him by the clerk deprived him of his right to present and have considered his claim at a time when no question of sincerity could be raised. Even assuming that misinformation was given to defendant, there is still a basis in fact to support a finding that defendant was not sincere.

[5] 50 U. S. C. App. § 456(j).

[fol. 45] involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

Applying this criteria to defendant's various statements and the facts of his religious affiliations, it is apparent that the Board was fully warranted in determining that defendant's views were not based on religious training and belief and in denying a I-O classification on that ground.[6]

Finally, although defendant does not explicitly raise this issue, there can be no basis for a claim that defendand was not afforded procedural due process. He received a hearing before his Local Board, at which he submitted both oral and written statements. He was also accorded a personal hearing before the Hearing Officer at which he submitted a further statement. Prior to this second hearing he had received a resume of the FBI report, and he also received a copy of the Department of Justice recommendation and was afforded an opportunity, of which he availed himself, to submit a reply.

I find the defendant guilty as charged. The proof of the charges against him has been sustained beyond a reasonable doubt.

Dated: New York, N. Y.,
February 21, 1963.

EDMUND L. PALMIERI,
U. S. D. J.

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[6] This result would follow whether the question is viewed as one of law, as defendant urges in his claim that Congress did not intend to exclude a position such as his from the definition of religious training and belief, or as one to which the "any basis in fact" test must be applied, as urged by the Government. *Compare United States* v. *Kauten*, 133 F. 2d 703 (2d Cir. 1943) *with Berman* v. *United States*, 156 F. 2d 377 (9th Cir.), *cert. denied*, 329 U. S. 795 (1946) and S. Rep. 1268, 80th Cong., 2d Sess. (1948), U. S. Code, Congressional Service, 80th Cong., 2d Sess., p. 1989, at 2002 [expressly referring to the *Berman* case in connection with the enactment of the present Section 6(j)].

[fol. 46]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JUDGMENT AND COMMITMENT

On this 26th day of February, 1963 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty by the Court, the defendant having waived trial by jury of the offense of being a registrant under the Universal Military Training and Service Act, unlawfully and knowingly failing, neglecting and refusing to submit to induction at the time and place fixed in an Order to Report for Induction mailed him by his Selective Service System Local Board. (Title 50, Section 462, U. S. Code) as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR AND ONE (1) DAY.

Defendant released on own recognizance pending appeal. [fol. 47] IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

EDMUND L. PALMIERI,
United States District Judge.

JAMES E. VALECHE,
Clerk.

* * * *

[fol. 48]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 23—September Term, 1963.
Argued October 2, 1963.

Docket No. 28137

UNITED STATES OF AMERICA,
Appellee,

v.

ARNO SASCHA JAKOBSON,
Appellant.

Before:

LUMBARD, *Chief Judge,*

FRIENDLY and SMITH, *Circuit Judges.*

Appeal from a judgment of the District Court for the Southern District of New York, Edmund L. Palmieri, *Judge*, sitting without a jury, convicting appellant of refusal to submit to induction in the armed forces as required by 50 U. S. C. App. § 462. Reversed.

OPINION—November 22, 1963

HERMAN ADLERSTEIN, New York, N. Y., *for Appellant.*

EZRA H. FRIEDMAN (Robert M. Morgenthau, United States Attorney for the Southern District of New York) (James M. Brachman and Robert J. Geniesse, Ass't United States Attorneys, of Counsel), *for Appellee.*

[fol. 49] FRIENDLY, *Circuit Judge*:

Arno Sascha Jakobson appeals from a judgment, entered in the Southern District of New York by Judge Palmieri, sitting without a jury, convicting him of refusal to submit to induction for combatant training as ordered by his Selective Service System Local Board, in violation of 50 U. S. C. App. § 462(a). He maintains that the notice of induction was invalid under § 6(j) of the Universal Military Training and Service Act, 50 U. S. C. App. § 456(j), which provides that the Selective Service Act shall not "be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

Jakobson's parents were Jews who migrated to the United States in his early youth. When about 13 years of age, he became estranged from the Jewish faith, avowedly because of his distaste for what he considered the "bloodthirsty nationalism" exhibited in certain portions of the Old Testament, such as the Book of Joshua. He registered with his Local Board on September 2, 1953, a few days after his eighteenth birthday. In his classification questionnaire he made no claim of conscientious objection in the item provided for that purpose but did claim physical disqualification because of a back injury, a claim which he supported shortly thereafter by a note from his physician. When his Local Board classified him 1-A, he sought and obtained a student deferment, a status in which, save for one short interval, he remained until February 9, 1956, when he was reclassified 1-A. Nearly two years later he was ordered to report for a pre-[fol. 50] induction physical examination. He presented a second physician's certificate describing his back condition but was found qualified for service and was so notified by the Local Board on March 18, 1958.

A month later Jakobson advised the Local Board that he believed himself exempt as a conscientious objector. With a 15-page addendum and three supporting letters, he filed the Special Form for Conscientious Objectors (SSS Form 150), claiming exemption from combatant service only; he answered the question "Do you believe in a Supreme Being" in the affirmative, with explanations of which we shall say more hereafter. At a hearing before the Local Board in the fall, he stated that even noncombatant service would result in "too many situations and relationships that would be a strain on my conscience * * *" and sought a 1-O classification which would exempt him from all military service but would subject him to a like period of civilian work contributing to the maintenance of the national health, safety, or interest; he also filed with the Board a 43-page discussion of his views.

The Local Board did not question Jakobson's sincerity but concluded that his claim was not based upon religious training and belief as defined in the statute; somewhat inconsistently with this view, it granted him classification 1-A-O, for noncombatant service, to which he was entitled only if he met the statutory test. Jakobson appealed. The Appeal Board tentatively determined that he was not entitled to classification as a conscientious objector in any form, and forwarded the file for an advisory recommendation by the Department of Justice, 32 C. F. R. § 1626.25 (b). After an investigation by a hearing officer, and a generally favorable F. B. I. report on the evaluation of Jakobson by his acquaintances, the Department made the following recommendation to the Appeal Board:

[fol. 51] "The Hearing Officer concluded that the registrant is not opposed to participation in combatant or noncombatant military training and service by reason of his religious training and belief; that his claim is based upon a personal moral code and that he is not sincere in his claim. He recommended that the appeal of the registrant based upon grounds of conscientious objection be not sustained.

"The Department of Justice finds that the registrant's claim is not sustained. It, therefore, recom-

mends that the registrant's claim be not sustained by your Board."

Jakobson then sent a further communication to the Appeal Board, again explaining why he regarded his convictions as religious and seeking to excuse his tardiness in advancing his conscientious objection claim (and the change in his request from a 1-A-O to a 1-O classification). One reason offered was that when about six months before his pre-induction physical examination, he inquired of the clerk of the Local Board as to qualifications for a conscientious objector exemption, he was told this was given "only to individuals with a long and overtly-provable pacifist background" who could produce letters from ministers; he added that since his family background was not pacifist, he had been forced to face this difficult problem by himself, "from scratch," when it arose. On December 9, 1958, the Appeal Board classified him 1-A. After unsuccessful efforts to carry the matter further, he was ordered to submit to induction, but, on completion of his induction physical, refused to take the step forward which symbolizes submission to induction. For this refusal he was indicted and convicted.

The Department of Justice had recommended denial of Jakobson's claim on two grounds: that he lacked sin- [fol. 52] cerity, and that his objections were not based on religious training and belief within the meaning of the statute. The Appeal Board did not indicate on what ground it relied. If we were certain that the denial of exemption rested on a finding of insincerity, Jakobson's five year delay in claiming conscientious objection and his shift of position after making the claim would oblige us to affirm his conviction. The finality which the Act bestows on the decisions of the local and appeal boards, 50 U. S. C. App. § 460(b)(3), precludes judicial rejection of their findings as invalid unless "there is no basis in fact for the classification" given to the registrant, *Estep* v. *United States*, 327 U. S. 114, 122-23 (1946), and "any fact which casts doubt on the veracity of the registrant is relevant." *Witmer* v. *United States*, 348 U. S. 375, 381-82 (1955). In Jakobson's case, as in Witmer's, there were enough "objective facts before the

Appeal Board to * * * cast doubt on the sincerity of his claim," 348 U. S. at 382, see also *United States* v. *Corliss*, 280 F. 2d 808, [Heise] 812, [Herold] 816 (2 Cir.), cert. denied, 364 U. S. 884 (1960). It is immaterial that on the cold record alone we would not have found Jakobson insincere or that the Local Board, which saw him, did not doubt his honesty. The resolution of conflicting inferences from personal observation and from the undisputed history was for the Appeal Board, as, indeed, it would be even if the scope of judicial inquiry were considerably broader than it is here. See *F. C. C.* v. *Allentown Broadcasting Corp.*, 349 U. S. 358, 364-65 (1955).

On the other hand, if the Appeal Board, although believing Jakobson to be sincere, based its classification on the ground that his conscientious objection was not the result of religious training and belief, we would be compelled to reverse the conviction and direct dismissal of the indictment. For we rule it an erroneous construction of [fol. 53] the statute to conclude that Jakobson's beliefs fell outside its definition of religion.

To summarize Jakobson's religious views is not altogether easy. He begins by defining religion as the sum and essence of one's basic attitudes to the fundamental problems of human existence. He recognizes an ultimate cause or creator of all existence which he terms "Godness." In theory an individual's relationship to Godness can take one or the other of two forms, a "vertical" relationship in which man relates directly to Godness, or a "horizontal" one in which man relates to Godness indirectly by binding himself to the qualities of Godness that exist in every creation in Mankind and throughout the world. For himself Jakobson rejects the vertical "one-to-one" relationship because God is unknowable to man, and because action and spiritual growth purportedly based on a direct relationship with Godness must thus lead to error since man can reason but imperfectly about the unfathomable. Moreover, he finds objectionable the egocentric two-dimensional view which the vertical relationship fosters. For him Godness can be approached only through psychic involvement in the three-dimensional world. Inward turning causes spiritual diminution, egocentricity,

and passive "putting up with" the evils of the world rather than an active attempt to change it. The way to arrive closer to Godness is by approaching the universals inherent in existence. The individual must deal directly with life, death, health, love, time—the "givens" of existence stemming from the Ultimate Cause—as he finds them in himself and others.

Jakobson sees himself as faced with an inescapable choice between acceptance or rejection of the order of the universe; for him this is the central problem of religion. He explains the positions of acceptance and rejection by reference to the characters of Ivan and Zossima in "The Brothers Karamazov." Ivan accepts God but rejects the [fol. 54] world because of the evil in it; he can go on living and can love particular individuals, but can only withdraw from the evil that he sees. Ivan doesn't oppose but passively and unhappily acquiesces; with such a position one could go to war by disavowing any personal responsibility. Zossima represents acceptance, which Jakobson defines as total affirmation of the basic blessedness of the fact of being—of goodness and "yesness." The taking of human life is incompatible with acceptance, which sees in all humanity "Godness"—the quality of having been created by the Ultimate Cause. Jakobson adopts the position of acceptance.

The definition of "religious training and belief" in § 6 (j), somewhat unusual for a statute, is the end product of a long development. Without going back further into history, we shall start with the Draft Act of 1917, 40 Stat. 78. This exempted "a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed on principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organization * * *" The constitutionality of this provision under the First Amendment was upheld, rather summarily, in *Arver* v. *United States*, 245 U. S. 366, 389-90 (1918). The corresponding provision in the bills that became the Selective Service Act of 1940 were

similarly restrictive.[1] However, in the course of enactment Congress broadened the clause to exempt from combatant training any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form * * *," 54 Stat. 889;[2] "religious training and belief" was left undefined.

[fol. 55] In *United States* v. *Kauten*, 133 F. 2d 703 (2 Cir. 1943), this court was concerned with a claim to exemption by an atheist whose objection to military service stemmed primiarily from a belief that this country's involvement in World War II was a political scheme of President Roosevelt. In denying Kauten's claim Judge Augustus N. Hand said that "The provisions of the present statute * * * take into account the characteristics of a skeptical generation and make the existence of a conscientious scruple against war in any form, rather than allegiance to a definite religious group or creed, the basis of exemption." He distinguished between "a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous," the most that Kauten had, and "a conscientious objection to participation in any war under any circumstances * * * a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse," 133 F. 2d at 708. We applied this view to grant exemption in *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521 (2 Cir. 1943) and held it determinative in *United States ex rel. Reel* v. *Badt*, 141 F. 2d 845 (2 Cir. 1944). Soon afterwards, however, the Ninth Circuit denied Herman Berman's right to exemption, although his

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[1] See Conklin, Conscientious Objector Provisions: A View in the Light of *Torcaso* v. *Watkins*, 51 Geo. L. J. 252, 269 and fn. 76 (1963).

[2] Congress declined to adopt an even broader amendment, urged by the American Civil Liberties Union, which would have exempted any person "who is conscientiously opposed to participation in war in any form" without any reference to religion. See Conklin, *supra*, 51 Geo. L. J. at 269-70.

views came closer to Phillips' and Reel's than to Kauten's. *Berman* v. *United States*, 156 F. 2d 377, cert. denied, 329 U. S. 795 (1946). In the course of its opinion, the court quoted a phrase in Chief Justice Hughes' dissent in *United States* v. *Macintosh*, 283 U. S. 605, 633-34 (1931), that "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation," and added that an individual's "philosophy and morals and social policy without the [fol. 56] concept of deity cannot be said to be religion in the sense of that term as it is used in the statute." 156 F. 2d at 381. These two statements were combined into the second sentence of § 6(j) in the 1948 enactment to form the present statutory definition of "religious training and belief"; their derivation from the *Berman* opinion was not left in doubt.[3]

In construing the conscientious objector provision today, we must take account of statements of the Supreme Court subsequent to our decision, *United States* v. *Bendik*, 220 F. 2d 249 (2 Cir. 1955), sustaining the statute's constitutionality, and decisions to the same effect by other courts of appeals. Most pertinent is that in the Maryland notary public oath case, *Torcaso* v. *Watkins*, 367 U. S. 488, 495 (1961):

> "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can aid those religions

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[3] The Senate Report, S. Rep. 1268, 80th Cong. 2d Sess., p. 14 (1948), states:

> "(j) Conscientious objectors:—This section reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 Act. Exemption extends to anyone who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and non-combatant military service. (See United States v. Berman, 156 F. 2d 377, certiorari denied, 329 U. S. 795) * * *"

based on a belief in the existence of God as against those religions founded on different beliefs."

Since it is hard to deny that making exemption from military service turn on religious training and belief as stated in § 6(j) aids religions, and, more particularly, religions [fol. 57] based on a belief in the existence of God, at least as significantly as permission to become a notary public, cf. *Speiser* v. *Randall*, 357 U. S. 513 (1958), the *Torcaso* statement requires consideration whether there is some other basis whereby a statute making religious training and belief a condition to exemption from military service can escape condemnation. The important distinction seems to us to be that, in contrast to Maryland's notary public oath, Congress enacted this statute, in mitigation of what we assume to be the constitutionally permissible course of denying exemptions to all objectors, for the very purpose of protecting "the free exercise" of religion by those whose religious beliefs were incompatible with military service which Congress had the right to require. See Mr. Justice Brennan concurring in *Abington School District* v. *Schempp*, 374 U. S. 203, 247-48, 295-98, 301-02 (1963). But, under present day thinking as to the First Amendment, a statute could scarcely be defended on this score if it protected "the free exercise" of only a few favored religions or preferred some religions over others without reasonable basis for doing so. See *Watson* v. *Jones*, 80 U. S. (13 Wall.) 679, 728-29 (1872). The freedom which the Constitution protects is the freedom to exercise the religion of one's choice; a statute limited to certain religions would restrict the free exercise of the disfavored ones. The time-honored principle of construing a statute not only to escape unconstitutionality but to avoid "grave and doubtful constitutional questions," *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407-08 (1909), thus dictates reading the definition of "religious training and belief" in § 6(j) as broadly as the words permit.

The statute clearly does not require belief in an anthropomorphic deity breathing, like the God of the Sistine ceiling, over the face of the waters. Long before 1948 men whose belief in a Supreme Being would not have been questioned had substituted the notion of "God out there"

[fol. 58] for "God up there."[4] The majority opinion in *Berman* recognized this, 156 F. 2d at 380; it asked only that one asserting religious belief should not "assign all beyond [our logical equations] as a great vacancy" but should entertain a belief "going beyond the physical revelations of life." Even more clearly Chief Justice Hughes' statement in *Macintosh*, made in the course of an eloquent dissent insisting on "our regard from the beginning for freedom of conscience," 283 U. S. at 631, was not intended to define "religion" or "God" in any narrow sense. We are by no means certain that the court that rejected Berman's claim because his evidence showed no belief in "a supreme power" of any kind would have rejected Jakobson's. Moreover, the statutory definition need not be regarded as precisely bounded by the *Berman* opinion when the compulsion to read it broadly is so strong. A contemporary theologian of high distinction and wide influence, who has taught at great universities on both sides of the Atlantic, Professor Paul Tillich, has written of God in terms that would surely embrace Jakobson's beliefs. As the footnote shows,[5] Jakobson's definition of

[4] These phrases are used by John A. T. Robinson, Bishop of Woolwich, in a recent book, "Honest to God," a chapter from which is reprinted in Horizon Magazine, Sept. 1963, p. 4.

[5] Rejecting both the supranatural view which "separates God as a being, the highest being, from all other beings, alongside and above which he has his existence" and the naturalist view which identifies God with the universe, Tillich identifies God as the self-transcendent ground of being. "God as the ground of being infinitely transcends that of which he is the ground * * * To call God transcendent in this sense does not mean that we must establish a 'super world' of divine objects. It does mean that, within itself, the finite world points beyond itself. In other words it is self-transcendent." From this view, two seemingly self-contradictory consequences necessarily follow: "first, whatever one knows about a finite thing, one knows about God because it is rooted in him as its ground; second, anything one knows about a finite thing cannot be applied to God because he is * * * quite other, or * * * ecstatically transcendent." 2 Systematic Theology 9 (1957). Knowledge of God comes through the unity of these divergent consequences, the

perception of the ground of being of every object of the natural and spiritual world accompanied by an understanding of transcendence of that thing of which it is the ground.

Other writings of Tillich which seem quite close to Jakobson's beliefs are these:

> "Theism in all its forms is transcended in the experience we have called absolute faith. It is the accepting of acceptance without somebody or something that accepts. It is the power of being itself that accepts and gives the courage to be * * * It transcends both mysticism and personal encounter * * *" Courage to Be, 184-186 (1952).
>
> "I have written of the God above the God of theism * * * In such a state (of absolute faith) the God of both religious and theological language disappears. But something remains, namely, the seriousness of that doubt in which meaning within meaninglessness is affirmed. The source of this affirmation of meaning within meaninglessness, of certitude within doubt, is not the God of traditional theism, but the 'God above God,' the power of being which works through those who have no name for it, not even the name of God." 2 Systematic Theology 12 (1957).

Again, in a passage adopted by the Bishop of Woolwich as the cornerstone of his own belief in God, Tillich says:

> "The wisdom of all ages and of all continents speaks about the road to our depth * * * All those who have been concerned * * * with that road * * * have witnessed the same experience. They have found they were not what they believed themselves to be, even after a deeper level had appeared to them * * * The name of this infinite and inexhaustible depth and ground of all being is God. That depth is what the word God means. And if that word has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional you have learned of God, perhaps even that word itself. For if you know that God means depth, you know much about him * * * He who knows about depth knows about God." The Shaking of the Foundations (The Depth of Existence), 56-57 (1948).

[fol. 59] religion as "the sum and essence of one's basic attitude to the fundamental problems of human existence" and his insistence that man can know nothing of God and that Godness can be approached only through psychic involvement in reality parallel the views of this eminent theologian rather strikingly. We cannot believe that Congress, aware of the constitutional problem, meant to ex-
[fol. 60] clude views of this character from its definition of religion,[8] or to require lay draft boards and personnel of the Department of Justice to pass on nice theological distinctions between vertical and horizontal transcendence. See Mr. Justice Jackson, dissenting, in *United States* v. *Ballard*, 322 U. S. 78, 92-95 (1944). It follows that if the decision of the Appeal Board rested solely on the view that the beliefs professed by Jakobson did not meet the test of § 6(j), it was predicated on an erroneous view of the law and afforded no basis for ordering his induction.

Our inability to determine the grounds upon which the Appeal Board based Jakobson's classification complicates the disposition of his appeal. The usual rule is that when a case is submitted to fact finders on two legal theories, one right and the other wrong, their determination cannot stand. *United Pilots Ass'n* v. *Halecki*, 358 U. S. 613, 619 (1959). The applicability of this general principle in selective service cases is supported by a statement in *Sicurella* v. *United States*, 348 U. S. 385, 392 (1955): "Here, where it is impossible to determine on exactly which grounds the Appeal Board decided, the integrity of the Selective Service System demands, at least, that the Government not recommend illegal grounds," although the pertinence of that statement to the instant case is weakened by the fact that in *Sicurella* the sole ground recommended by the Department was held illegal. However, the Supreme Court cited with approval *United States ex rel. Levy* v. *Cain*, 149 F. 2d 338 (2 Cir. 1945),

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[8] Jakobson comes closer to a traditional reading of "Supreme Being" than Tillich in one respect, namely, his acceptance of the notion of an original creator and supreme existence, which Tillich finds unacceptable as subjecting God to categories of finitude.

where this Court granted a writ of *habeas corpus* because a special advisory panel had made a general conclusory recommendation that may have rested on grounds beyond its power and there was no proof that the Board [fol. 61] had ignored it. And in *United States* v. *Erikson*, 149 F. Supp. 576, 579 (S. D. N. Y. 1957), Judge Kaufman acquitted a defendant where although "the Appeal Board could validly have rested its decision on the hearing examiner's impression that the defendant was insincere, there was no evidence that the Board based its decision on this ground rather than the invalid ground." See also *Shepherd* v. *United States*, 217 F. 2d 942 (9 Cir. 1954), rehearing den., 220 F. 2d 855 (1955); and *Ypparila* v. *United States*, 219 F. 2d 465 (10 Cir. 1954). We do not read *Sovich* v. *Esperdy*, 319 F. 2d 21 (2 Cir. 1963), cited by the Government, as deciding anything to the contrary since in that case the Regional Commissioner expressly concurred in the erroneously reasoned opinion of the Special Inquiry Officer.

Since Jakobson's classification may have rested on an erroneous ground, his conviction cannot stand. We see no principle that would prevent our reversing for a new trial in which, if the Government chose, it could endeavor to prove from the mouths of members of the Appeal Board that they considered Jakobson to have been insincere. See *United States* v. *Balogh*, 157 F. 2d 939, 944 (2 Cir. 1946), judgment vacated on other grounds, 329 U. S. 692 (1947); *United States ex rel. Reel* v. *Badt*, *supra*, 141 F. 2d 845 (2 Cir. 1944). But because we are dealing here with action taken by the Appeal Board five years ago, we think it more "just under the circumstances," 28 U. S. C. § 2106, to direct dismissal of the indictment, as was done in *Batelaan* v. *United States*, 217 F. 2d 946, 947 n. 1 (9 Cir. 1954); *Shepherd* v. *United States*, *supra*, 217 F. 2d 942; *Ypparila* v. *United States*, *supra*, 219 F.2d 465; and *United States* v. *Erikson*, *supra*, 149 F. Supp. 576, without prejudice to such new proceedings for Jakobson's induction, if any, as the Selective Service System may think it wise to undertake.

Reversed.

[fol. 62]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

* * * *

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

ARNO SASCHA JAKOBSON, DEFENDANT-APPELLANT

JUDGMENT—November 22, 1963

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and that the action be and it hereby is remanded with direction to dismiss the indictment in accordance with the opinion of this court.

A. DANIEL FUSARO
Clerk

[fol. 63]

[File Endorsement Omitted]

[fols. 64-77] * * *

[fol. 78]

IN THE UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

[Title Omitted]

ORDER DENYING PETITION FOR REHEARING—
February 10, 1964

A petition for a rehearing having been filed herein by counsel for the appellee,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
Clerk

[fol. 79]

[File Endorsement Omitted]

[fol. 80]

[Clerk's Certificate to foregoing Transcript Omitted in Printing.]

[fol. 81] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 24

SELECTIVE SERVICE SYSTEM

Form approved, Budget Bureau No. 33-R118.

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No. 50 27 35 417

Date of Giving April 18, 1958

Date received back at local board

Selective Service System
LOCAL BOARD NO. 17
321 West 44th Street
New York , N. Y.
(Local Board Stamp)

Name JAKOBSON, ARNO SASCHA
(Last) (First) (Middle)

Address 111 Ellwood Street, Apt. 4-F
(Number and street or R. F. D. route)

New York 34, New York
(City, town, or village) (County) (State)

This form must be returned on or before MAY 25, 1958
(Ten days after date of mailing or issue)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form No. 100).

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, the local board, in its discretion, for good cause shown by the registrant, may grant a reasonable extension for filing this special form.

SERIES I—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in Series I, but not to both of them. The registrant should strike out the statement in this series which he does not sign.

I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form. I, therefore, claim exemption from combatant training and service in the Armed Forces.

(Signature of registrant)

I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces.

(Signature of registrant)

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because of his religious training and belief, conscientiously opposed to participation in war in any form and each claim in such connection, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President or shall, if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate. Any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment.

SERIES II—RELIGIOUS TRAINING AND BELIEFS

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, use extra sheets of paper to this page.

1. Do you believe in a Supreme Being? Yes ☐ No ☐

2. Describe the nature of your belief which is the basis of your claim as set forth in Series I above, and state whether or not your belief in a Supreme Being involves duties superior to those arising from any human relation.

[illegible]

SSS Form No. 150 (Revised 4-25-52). This revision supersedes ... (1)

[fol. 82]

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

quaker trained as captain's clerk at prayer

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

I rely only upon inner inspiration

5. Under what circumstances, if any, do you believe in the use of force?

[illegible] in case of danger

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

quaker training in basic principles

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

have not for only given personal expression to my views in discussions with friends and associates

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended From—	To—
PS 154	grade	156 St bet 4th & 5th Aves	19 41	19 42
PS 153	junior high	153 St & Convent Ave to 145 St & Broadway	19 42	19 44
HS [illegible]	academic	Convent Ave & 139 St to 135 St & Broadway	19 44	19 45
Manh. Coll. (Night Sess.)	[illegible]	135 St & Convent Ave to [illegible]	[illegible]	19 53

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in sc[illegible] or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated bel[illegible] with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked From—	To—
[illegible]	[illegible]	[illegible]	19[illegible]	19[illegible]
[illegible]	[illegible]	[illegible]	19[illegible]	19[illegible]
[illegible]	[illegible]	[illegible]	19[illegible]	19[illegible]
[illegible]	[illegible]	[illegible]	19[illegible]	19[illegible]
	[illegible]	[illegible]	19	19

[fol. 83] SERIES II

2. nature of my beliefs—

I believe in a Supreme Being that is higher than Man. In this context I use the word "Being" to be synomous with "that which is", or "reality". By "higher than Man" I men the "Creator of Man"; and by "create" I mean to be "ultimately responsible for the existance of". That is, I believe that the existance of Man is the *result* of the existence of the Supreme Reality.

I feel that as a human being with human limitations I am incapable of knowing anything more about the nature of the Supreme Reality other than the fact that such Reality does exist. I feel that I am able to know the fact of the existance of such a Supreme Reality by means of reason aided by faith; that is to say, through active, concentrated, meditation about the problems involved, and through unwavering faith in my own powers for seeking and recognizing the truth, and in my right as a human being for attempting to do so.

I therefore believe that the essence of my religious quest lies not in my seeking for knowledge about the nature of the Supreme Reality, which to me is unknowable; rather it lies in my seeking for knowledge about the ultimate nature of *that which was created by* the Supreme Reality, namely, about Man. It lies in my searching for those objective moral standards which my divinely-given reason can accept as most closely satisfying the ultimate nature of man.

I wish to emphasize here that the process of concentrated contemplation that this involves is an active and important part of my living experience; that I sincerely believe that though my efforts substitute mediation and contemplation for the more common religious techniques of prayer and ritual, they still constitute "religious experience" in its highest sense, as they involve what for me is the only kind of relationship with the Supreme Reality that is possible: a relationship with *that which the Su-*

[fol. 84] *preme Reality has created.*

I believe that each man possesses the potential for free Will; that men can, with concentrated effort, achieve volition that is not completely determined by heredity and environment. I believe this through introspection, reason, and faith; introspection that tells me that I can achieve such volition, (and I am a human being like all others,) reason that tells me that all progress must ultimately be based on such free, creative volition, and faith in the validity of the results of my reason and introspection. I believe that this premise of Free Will has two inescapable corrolaries: 1) that Man must be partly spiritual; for if he were entirely a physical being whose mind is nothing but an electron-proton complex, he could not be said to possess free volition, as the laws of cause and effect apply completely for purely physical phenomena. For this reason—Man's spirituality—I feel it is valid to say that Man is partly akin to the Supreme Reality. It is this belief which leads me to ascribe dignity and worth to each individual to feel that no individual has the right to pass complete judgement over any other individual lightly, no matter what the situation may be. 2) that Man must have both the necessity and ability for seeking and setting moral values for himself, as his Freedom frees him *from* the fetters of pre-inscribed and pre-determined values, and frees him *to* develop his own values with the use of his devine gift of reason.

I feel that the most ascertainable value judgments that I can make are those which are most directly connected with those aspects of Man's existance which are themselves most certain. I believe that of all the things that exist, the most certain of all is Life. Through observation and introspection I sense and know the existance of Life and know many of its characteristics: that Life represents all that Man is ever *given* in an ultimate sense, everything else is created and arranged by men; that Life is therefore fundamental to everything else; that [fol. 85] everything that has to do with health, love, and reason is joyful, while everything that has to do with illness, hatred, and destruction is painful and a precursor of Death; that death means not only the loss of those things that men have contributed to human existance,

but also of those that are in my opinion devinely given to human existance—breath, warmth, the power of reason, the joy of the sense of aliveness, etc. For these reasons I feel, and have for a long time felt, that my most basic value judgment, the one that I feel most strongly about, is that Life is sacred; that it is a higher value than all other values. That no man ought ever to wilfully sacrifice another man's life as a means to any other end, most especially when the victim might possibly an innocent individual who is unfortunate enough to constitute a "statistical" sacrifice as in the case of a bombing raid, for example, is for me my most important religious law.

I would like to emphasize here how strongly I feel about this point and its related problems; how my attitude to the willful taking of another man's life stems from my most sacred convictions, and how it comprises the deepest part of my conscience, which I feel I cannot allow myself to compromise with if I am to keep my moral integrity.

* * * *

My conscientious opposition to war is ultimately based on the above convictions. I would like now to attempt to summarise briefly my reasons for my opposition to war:

1) Naturally, my primary reason for opposing war in any form is that I am opposed to and horrified by the violently destructive nature of war. I am opposed to the unlimited use of violent force that an army possesses. I am opposed to the fact that war entails the sacrifice and destruction of countless innocent individuals. I feel that this totally destructive nature of war is completely incompatible with my most sacred convictions. I feel that [fol. 86] it is this very violent destructiveness which is the real evil; that it is the method "war" itself which must be fought if we are to have a lasting peace.

2) In wars the enemy is reduced to a mere abstraction—he is "a nazi" or "a gook". In reality, however, a soldier is more than merely an incarnation of the principles he has allowed himself to represent: he is a total, concrete human being with strengths and shortcomings, hopes and anxieties. Even the most depraved individuals have a

spiritual aspect to them, as all men stand in the same relationship to the Supreme Reality that has created them. I feel that it is incompatible with my most sacred convictions to reduce the killing of concrete human being to a statistical necessity, as I consider all human beings to be special and worthy of serious and special consideration.

3) Wars are rooted in deeper causes than their overt "reasons" would indicate. A century that is characterized by one major catastrophe after another, one polarization into "opposing camps" after another, is a century which exhibits the inevitable results of a final degeneration of an inherently inadequate system of culturally-patterned values, a system of values which sees Man as a debased, non-spiritual entity who can readily be sacrificed as a means to another man's ends when those ends are widely enough accepted as being noble. War serves to represent, exhibit, and pass on these values in their most highly degenerated form. The fighting of wars gives impetus to the very moral atmosphere in which further conflicts can so easily breed. And most particularly, I feel that a "balance of power" build-up like the present one must necessarily have an insidious effect on future developments, by providing both the means and the tensions for future bloodshed. Thus I feel that wars and their preparations not only contradict my most sacred convictions while they are being fought, but they also serve in a long range sense to produce the very moral atmosphere [fol. 87] that seems to be a necessary and sufficient requirement for their perpetration. In other words, I not only believe, for the reasons already stated, that the ends we all desire do not justify the methods of war, but I also believe that the methods of war are not a practical means to those ends.

4) I feel that the better way to bring about a peaceful world is for individuals, whose consciences direct them to do so, to stand against the very core of the problem, by not adopting the techniques of war themselves, and by working in a positive way for peaceful aims instead. I feel that a non-combatant's classification would enable me to serve my country in a way that is compatible with my

deepest convictions, convictions which are grounded in my religious beliefs, by enabling me not to be required to do what I cannot do. I therefore ask you for the privilege of being allowed to take advantage of the laws and precedents which exist for this purpose.

[fol. 88] 3) source of beliefs—

My beliefs developed entirely by means of my own active efforts. I have never been a member of a religious or any other organization which officially advocates nonviolence. Though some aspects of my present views—such as my belief in a Supreme Reality and certain of my attitudes towards war and killing—have been with me for a long time, my convictions taken as a whole can be said to have developed slowly over a long period of time; a development which entailed conscious allocation of time for active concentration, and one which I believe has always slowly but steadily tended to move in one direction: towards my present views. Admittedly, because of the solitary nature of this development, for a long time my views have been fragmentary in nature, and have only become more or less unified as a result of the last few years' efforts.

I was raised by my parents in the Jewish tradition, and I continued to feel myself to be rooted in that tradition until I was about thirteen or fourteen years old. After that time, my feelings of connection with that tradition slowly but surely waned under the influence of more universal beliefs that I began to incorporate, beliefs which in some cases conflicted with the Jewish tradition.

Though I have never been trained in total views on these matters which I accepted outright, I did read things and experience things which I feel had some influence on the directions that my convictions have steadily been taking, and thus in a very loose sense, I can be said to have received the benefit of others' knowledge and experience, which is ultimately what "training" entails anyway.

The earliest influence that I can remember is a book which made a tremendous impression on me when I first

read it at the age of eight or nine. I read it twice in a row then; it was the first real book I ever read, and I've read it many times since. It was Felix Salten's "Bambi", which, contrary to the popular conception, based on the Disney "adaptation", is a consciously conceived allegory [fol. 89] of Life that very definately expresses a social, moral, and religious point of view, and one that is extremely compatible in many respects to my present day views.

It was a few years after that when I first started to feel and express dissatisfaction, in a childs way, with certain aspects of the Jewish tradition, such as with the bloodthirsty nationalism displayed in the episode of Joshua, etc. The influence of my first non-local surroundings, Music and Art High School, first made me feel related to people of all races and religions, and was I think an important early influence for my seeking a more universal basis for my religious needs.

One of the most important influences towards the development of my present convictions was the experiences I had as a counselor in the welfare childrens camps with which I have been connected since 1953, the details of which are listed in section III. It was there that I saw at first hand, through my own experiences of working with boys, how the effects of love and understanding combined with a positive emphasis were much more satisfactory in the long run than the effects of a "disciplinarian" approach combined with a negative emphasis on punishment. In the summer of 1955 I saw the truth of this most clearly in connection with a particularly hostile and aggressive boy, one with a record of bad relationships to Authority, who responded extremely well to the kind of treatment described, much better than can be usually expected in such a short period of time. It was in this environment that I first started to cope more or less seriously with the problems that are expressed in this request.

More recently I read several books which I believe to have helped me to achieve a greater unity and understanding of many aspects of these problems. Some of these which I can now recall are:

Remarque—All Quiet On The Western Front.
Sorokin—The Crises Of Our Age; S.O.S.—The Meaning Of Our Crises
Koestler—Reflections On Hanging
[fol. 90] Fromm—Escape From Freedom, Man For Himself, Religion and Psychoanalysis, The Sane Society, The Art Of Loving
Dostoevski—Crime And Punishment, Notes From The Underground
Etc.

But above all, I must emphasize that my present beliefs and convictions were developed mainly by means of an active, concentrated effort to think about the problems involved, an effort which included the spending of much time sitting alone and thinking about the problems involved, often with the aid of making notes, scribbles, outlines, etc. It is in this manner that my religious and social thinking has developed in the last few years.

[fol. 91] 5) the use of force—

My attitudes to the use of force are a direct result of my basic religious convictions relating to the sanctity of Life and the dignity of the individual. I feel that force might be justifyable in certain circumstances when it is non-violent. Some examples of such force that come to my mind are the following: (1) physical restraint of a child who is about to do some harm (2) world economic boycott of a nation whose internal developments are likely to lead to future belligerance (3) the force of firmly voiced moral opinion (4) the Montgommery bus boycott (5) the force of benevolent, loving actions in individual and social situations, etc. As each situation has its own extenuating factors, it is difficult to make meaningful generalizations.

Do I believe that violent force is ever justfyable? A hypothetical situation is often given—unfortunately one that often has some relation to some real situations—in which one is asked what he would do if he had to make an inescapable choice between allowing innocent victims to be murdered or killing the murderor first. A "suppose" situation is easily invented to illustrate such a problem, in which the only kind of force possible to prevent the

murder is for some reason or other violent, death-dealing force. No physical restraint, no moral opinions. Would I shoot to stop the man who I know is about to murder the child, or would I allow, by my inaction, this act to happen? I don't know. Life, to me, is sacred, but here it seems that I can't live up to this fully no matter what I did or didn't do. Which decision would enable me to best live up to my convictions as to the sanctity of life? Perhaps I would use the violent force, and be sorry later on. Or perhaps I would do nothing and feel guilty later on. No one knows exactly how he will react in a given situation; until it comes, he can only set his moral standard in such a way as is most meaningful to him, and then try to live up to them as closely as possible. Some criteria I think I might want to use in such a "suppose" [fol. 92] situation are: (1) would the force be likely to hurt innocent bystanders (2) would my actions be vengeful and done in anger, or would they be done sadly and only in order to help (3) is it at all possible to help without using violence (4) would my using violent force tend to have the pernicious effect of concretely leading to more violence and more bloodshed? Even so, I just don't know how I'd react in this "suppose" situation.

The real question involved seems to be exactly where to "draw the line" between advocating and not advocating the use of violent force. But in terms of my attitude to war, the question of drawing that line is relatively meaningless, for though I may feel some confusion as to exactly where to draw it, I believe that I do definitely feel that the use of war in any case is one use of force that I would *not* advocate, whatever the circumstances. The war situation can never be compared as an exact analogy to the "suppose" situation. I believe this for the following reasons:

1) war absolutely must hurt countless innocent individuals. A bomb cannot pick out guilty victims, no matter what the definitions of "guilt" are.

2) war does have a pernicious effect in that it tends to produce and strengthen the moral atmosphere that breeds more of the same.

3) it is impossible to fully equate an enemy soldiers actions, no matter how evil his country's purposes are, with the actions of an individual maniac, as there are too many extenuating factors. In most cases, an enemy soldier is a concrete human being, in many ways rooted in his sociocultural environment with its values and illusions, who, accepting the dynamics of social structure as simply something that is, allows himself to be swept into a situation in which he is required and trained to kill his individual "enemies" as they come to him, without regard to who or what they might be. I believe that in many cases the soldiers on *both* sides can be meaningfully described in this way, and the very *possibility* that I might be called upon to end the life of an individual whose main crime is the same kind of moral weakness that I would be [fol. 93] exhibiting if I ever allowed myself to do combatant service in a war, is in itself a sufficient reason to make me want to make this appeal for classification, though there are so many more.

4) the most atrocious and bloodiest acts of wars are usually commited well after the violent conflicts have been well under way, and such acts are before very long commited by all the participants. By contrast, nonviolent resistance does not usually produce atrocities of the Buchinwald-Hiroshima magnitude.

5) in war, the real evil is war itself, and the only really effective way to fight this evil is by drawing a moral line and by standing against the methods of violent destruction themselves. In the war situation, one *can* stand for the sanctity of life, by simply not killing when his most sacred convictions tell him not to kill.

"But what if the Nazi's and Japanese had won while we were all pacifists?" In the first place, this question completely disregards the inseperable connections which exist between a widely-accepted system of values and the situational results of such a system of values. Pacifism is a system of values. Western culture can be said to have undergone a more or less common history of slow development, and part and parcel of such a development is the development of a system of values. It is this historical-

social connection between the various nations of the Western world which causes their inescapable similarities. If the U.S. had been basically pacifist by the 1940's, then the same would have had to have been true of the rest of the Western World, at least to some extent, and then the conditions which led to the war probably wouldn't have occurred. In the second place; even if this were not so, pacifists wouldn't have handled our part of the world's relationships in the first half of the century in exactly the same way in which they were handled: they probably would not have allowed any scrap metal to be sent to Japan, for instance. One cannot expect pacifism to pro- [fol. 94] duce immediate results, especially in a situation which was bred for a long time in a world atmosphere of non-pacifism.

But even in spite of all this, I feel that under no circumstance, even under those resembling the aggressions of the Nazi's and the Japanese, would I be able to advocate the use of the methods of war, with its disregard for the dignity and safety of innocent individuals, its total destructiveness, and all the other characteristics I have already attempted to present.

[fol. 95] 6) actions and behavior—

In high school and in college I majored in Art, and I am still planning to spend a major part of my life's liesure painting. In 1956, I worked in the Advertising field as an art studio apprentice (the details are listed in section three) for three months, but finding that I couldn't with a clear conscience continue to contribute to an institution to whose aims and methods I felt so deeply opposed, I left that field and have worked in the Metropolitan Museum of Art ever since as a mailboy—clerk, in spite of the relatively low financial and social level in which I have remained as a result of this choice.

I believe in the communicative value of Art in its highest sense. I have always put more emphasis on positive peaceful achievements—the painting of a good picture, the success of a counseling assignment—than I have on the speaking or standing against something that I believe has a pernicious influence; though it is true that I have

never and will never work for a company that I feel at the time to have a close direct connection with a war effort. I doubt if I would ever again allow myself to come even as close to something which I don't believe in as the advertising field. However, I do put my major emphasis on positive achievements, and for that reason feel I can accept a 1-A-O with a clear conscience.

It is also for that reason that I have decided to pursue a career in Social Work. I based that decision on a few courses that I have taken in related subjects, and on the experiences I have had in counseling.

I spent three summers as a counselor in a childrens welfare camp. Not having a vacation the fourth summer, I donated my services to a childrens welfare camp during my weekends, without compensation. I worked at that camp for five weeks during the fifth summer, during my five-week vacation from my regular full-time work at the museum. The details are listed in section three. In doing this work with children, I have always tried to put into practice my beliefs about the ultimate value of love [fol. 96] and understanding as methods for working with people. I believe that I achieved some degree of success with these methods in my counseling experiences. At one time (1955), when I was asked to write reports about my work with each of the boys in my group, I included in my reports my opinions and observations regarding the effects of such treatment. These reports were not found acceptable by the Supervisor involved, and as I could not bring myself to make conclusions which I didn't believe to be the relevant ones, my reports were discarded, and new ones were written in their place by the supervisor. I have not been able to obtain my original reports. I am sorry that my background and development is such as I can not present more material here, as I realize that this would tend to make your decision a more difficult one.

[fol. 97] *Further Information—series III*

1) schools, continued.

City College of N.Y.—college—139 St. and Convent Ave. 1953-1956

Columbia University—college—116 St. and Broadway—1957-1958—both in Manhattan

2) work, continued.

children's counselor—Camp Poyntelle, Inc., 204 W. 71 St. Manhattan—summers of 1953, 1954, 1955

maintenance helper and relief childrens counselor—Camp Madison-Felicia, Inc.—150 Nassau street, New York 38, N.Y.—parts of summers of 1956, 1957

3) addresses, continued.

Neither I nor my parents can recall our addresses in Germany or in Cuba. Neither I nor my parents can remember the house number of our first apartment in Manhattan.

[fol. 98]

3. Give all addresses and dates of residence where you have formerly lived

Name of City, Town, or Village	State or Foreign Country	Street Address & Apt. No. if any		
BERLIN	GERMANY	?	19 ??	19 ??
AVANA	CUBA	?	19 ??	19 ??
[illegible]	NY	[illegible] 1ST ST MANHATTAN	19 91	19 ??
NYORK	NY	411 E 69TH ST MANHATTAN	19 92	19 PRES
			19	19
	SEE ATTACHED SHEET		19	19

4. Give the name and address of your parents and indicate whether they are living or not.

[illegible] FATHER [illegible] NEW YORK NY [illegible]

[illegible] MOTHER [illegible] NEW YORK NY [illegible]

5 (a) State the religious denomination or sect of your father [illegible]

(b) State the religious denomination or sect of your mother [illegible]

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheet(s) of paper to this page.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and the reasons why you became a member.

NO

2. Are you a member of a religious sect or organization? NO (Yes or no) If your answer to question 2 is "Yes," answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you

(b) When, where, and how did you become a member of said sect or organization?

(c) State the name and location of the church, congregation, or meeting where you customarily attend

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, political, or labor organizations.

I [illegible] MEMBER OF [illegible] FROM [illegible] TO [illegible]

[illegible] ACTIVITIES [illegible] MEMBER OF THE CITY CREDIT UNION [illegible]

I [illegible] SERVED [illegible] PUBLIC [illegible] [illegible] I WAS A MEMBER OF [illegible]

[illegible] INC. PLAN [illegible] FROM 1953 TO 1956 I WAS A [illegible]

IN

[fol. 99]

Series V.—REFERENCES

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your profound convictions against participation in war

Name	Full Address	Occupation or Position	Relationship (if any)
George Vos	166 Centre St Brooklyn N.Y.	Teacher	Friend
Jay Leonard	71 Crescent St Long Island City	Teacher	Friend
Ernest Mann	1911 Columbia St Brooklyn N.Y.	Teacher	Friend

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended).

I, John Sparks, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are (are, are not) in my own handwriting.

Registrant sign here [signature] (Signature or mark of registrant)

(Signature of witness to mark of registrant)

(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

Selective Service Board
LOCAL [illegible] No. 17

U. S. GOVERNMENT PRINTING OFFICE 16—54331-5

[fol. 100] IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 25

April 21, 1958
76 Crescent Street
Northampton, Massachusetts

Selective Service System
Local Board 17
321 West 44th Street
New York, New York

Dear Sirs:

I have known Arno Jakobson for nearly four years. In that time I have never known him to act with less than a scrupulous honesty which is extremely rare in our society. He is honest not only in his dealings with others; he is self aware and honest with himself. His request for a IAO classification is a thoroughly serious and entirely sincere request. I think that there is no question but that his application for this classification is one of those which the selective service legislation was designed to honor.

I have not discussed Mr. Jakobson's grounds for his beliefs with him in detail. I do know many of his most basic beliefs from many conversations that we have had during the past four years. These beliefs are mature and of long standing; there is evident consistency among his beliefs. It is his persistent feeling that he does not do a clear or effective job of stating his thoughts, but I have found him able to express the core of his thinking with great directness and freedom from the irrelevant.

I hope that you will give favorable consideration to Mr. Jakobson's application. I believe that his usefulness to his nation and to mankind will be best realized if you

use your power to permit him to act as his conscientious belief dictates.

Sincerely yours,

/s/ Jay Savereid
JAY SAVEREID
Assistant Professor
Speech Department
University of Massachusetts

[fol. 101] IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 26

EVENING STUDENT ORGANIZATION
Fordham University—School of Education
302 Broadway, New York 7, N. Y.

April 23, 1958

Selective Service Administration
321 W. 44th St.
New York City, N. Y.
Local Board 17
Dear Sirs,

I have known Arno Jacobson for more than two years. I have come to know and understand his opinions on many subjects and while I completely disagree with his views, especially as regards the problem of the soldier in war, I know that his beliefs on these subjects are sincere.

Arno and I worked together in very close association for more than a year. We debated many current issues as well as different eternal questions. As a result of our numerous discussions I am positive that he is definitely convinced that the killing of another human being for any reason whatsoever is absolutely wrong. Arno would never

fire a weapon at any enemy soldier even if his life depended on it.

I admire Arno for the sincerity of his belief, but I cer-
[fol. 102] tainly do not share it nor do I agree with his religious views. I am a Roman Catholic and am at present a Sergeant in Company "A" of the 165th Infantry (69th N.Y.) of the New York National Guard.

I believe that the safety of our nation lies in a strong military defense force, but I do not believe that the purposes of our army can be served by placing Arno Jacobson in any combat type service. He is obviously a concientious objector and should be classified as such by your office.

Sincerely

/s/ Robert W. Haney

[Handwritten]

Selective Service System
LOCAL BOARD NO. 17
April 28, 1958
321 West 44th Street
New York 11, N. Y.

[fol. 103] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
GOVERNMENT'S EXHIBIT NO. 27

NEW YORK OFFICE: 150 NASSAU STREET, N. Y. 38, N. Y. Beekman 3-4540

CAMP MADISON-FELICIA, INC.
R.F.D. #1, Putnam Valley, N. Y.

OPERATED WITH THE COOPERATION OF THE SOCIETY FOR ETHICAL CULTURE / CAMP DIRECTOR: GEORGE NEW

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David W. Summerfield
Dr. A. A. Wassell
Mrs. Arthur A. Zucker

April 22, 1958

Selective Service System
Local Board # 17
321 West 44th Street
Manhattan, New York

Dear Sirs:

I am sending this letter at the request of Arno Jakobsen, draftee.

Mr. Jakobsen is known to me through three summers of service at Camp Poyntelle, a camp for underprivileged New York City children of which I was formerly director, and through two summers of service at Camp Madison-Felicia, also a camp for underprivileged children which I am currently directing.

Mr. Jakobsen was a conscientious and reliable staff member. As a counselor, he took a deep interest in the welfare of the children with whom he worked and in the conditions which had led to the pressures and troubles many of them were experiencing - at Poyntelle our campers came through case-work and other child-care agencies, and many of them were severely deprived.

I can recall hearing Mr. Jakobsen, through these several summers, express his concern, in discussions with other staff members, with violence as a means of resolving social problems. I have every confidence that he is a conscientious person of high integrity, and that his present conviction that he must seek non-combatant service status is sincerely taken.

I will be pleased to provide you with any further information which will be helpful to you in meeting your responsibility for a decision in his regard,

Sincerely,

George New, Director
Camp Madison-Felicia

GN:f

Contributions to Camp Madison-Felicia, Inc. are deductible from taxable income

[fol. 104]

Dear sirs,

This is to declare that Arno Jakobson, residing at 111 Ellwood St., New York 34, N.Y., was employed at Camp Poyntelle in Poyntelle, Pa. till Sept. 1.

/s/ George New
Executive Director

[fol. 105] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 28

New York City Selective Service System
Selective Service System
LOCAL BOARD NO. 17
April 23, 1958
(Local Board Stamp)
New York 11, N. Y.

QUESTIONS TO BE ANSWERED BY A REGISTRANT CLAIMING TO BE A CONSCIENTIOUS OBJECTOR AND/OR MINISTER OF RELIGION

Date: April 23, 1958

Arno Sascha Jakobson (Registrant's Name) — 50-17-35-417 (Selective Service No.)

1. How does registrant earn a living?
   By working as a clerk—mailboy in an art museum
2. Describe secular employment:
   a. Type of work
      clerk—mailboy
   b. Hours
      Mon.-Fri., 8:45-4:30
   c. Wages
      $2900 per annum
   d. Name of Employer
      Metropolitan Museum of Art
3. What was registrant's income from secular employment during the past 12 months?
   gross $3201.44 in 1957; gross $725.04 till March in 1958
4. Does registrant preach and teach the principles of religion? No.
   a. If so, how many hours a month?
   b. How many members are there in his Congregation?

c. How many other ministers are there in his Congregation?

5. Give title, or titles, if any, registrant holds in his Congregation and submit certification of such assignment. I do not belong to a religious organization.

a. Is registrant a Pioneer? If so, submit certification from Watchtower Bible and Tract Society

b. How many other Pioneers in his Congregation?

c. List number of hours reported to Watchtower Bible and Tract Society as spent in Pioneer Ministerial duties each month for past three months.

[fol. 106] 6. List all ministerial duties performed over past month and hours devoted to each duty. None.

a. How much of registrant's time over the past month was devoted to selling or distributing literautre? None.

7. With regard to conscientious objection, state under what circumstances registrant believes in the use of force. See attached sheets.

8. Is registrant's conscientious objection based upon the views of the Watchtower Bible and Tract Society as expressed in the pamphlet "Neutrality" and the article "Why Jehovah's Witnesses are not Pacifists"? No.

9. Will registrant participate in any war that he understands is authorized by Jehovah? No.

10. Does the registrant believe in the use of force in defense of: himself? his religion? his family? his brethren? his home? his Government? his Country? See attached sheets.

11. Is registrant's conscientious objection based primarily upon his desire to preach or upon his unwillingness to use force? Unwillingness to use force.

SSS-N.Y., City
Form No. 54
(Revised May 1957)

Selective Service System
LOCAL BOARD NO. 17
May 6, 1958

[fol. 107] *Question seven.*

It is difficult for me to generalize about the use of force, as each situation invariably has its own extenuating factors which make it unique. However, I believe that I might be able to say that I might believe in the use of force in some situations when the force would be non-violent. Some examples of such non-violent force that I can think of are: (1) physical restraint of a person about to do some harm, (2) ecnomic boycott, (3) the force of firmly voiced and adequately presented moral opinion, (4) the force of reason and acts of love and kindness, etc. In keeping with my convictions, I would want to limit my advocating of force to the advocating of such non-violent force only, whatever the circumstances.

There are often suggested those situations, hypothetical or otherwise, where there is a relative lack of extenuating circumstances, and in which some substantial harm would result from complete inaction: for instance, a maniac breaks into a home and is about to murder its inhabitants. Even in such situations I would want if possible to limit the use of force to such force as is not likely to cause death to the murderer; the purpose of force being preventative. I would want to use physical restraint, reasoning, etc. And if this were not possible; if for some reason the only way I could prevent harm from occuring to the innocent family is by using violent force? Then I would just have to decide then and there how best to live up to my convictions, as outlined in my answers to form 150. I don't know how I would react. Perhaps I would be sorry afterwards no matter which choice I made. The question involved here seems to be just exactly where I would draw the line between wanting to act in one way and wanting to act in another. I don't know exactly where this line ought to be drawn. But I can say that some criteria that I would want to apply to the question are the following:

(1) Is it at all possible to avoid the use of violence and [fol. 108] still prevent harm? In accordance with my con-

victions, I would want to avoid the use of violence in every case, whenever possible.

(2) Would the violence involved affect innocent people, who would be sacrificed as a means to an end? I could never and would never advocate such actions in any circumstances, no matter how few the sacrificed individuals, no matter how "great" the purpose, as I believe that all individuals have great worth, and that no individual's life is so worthless as to make him fit to be a statistical sacrifice of the Hiroshima type.

(3) Would my actions be freely made? I believe that the use of force against another human being, whether it be violent or otherwise, is a most serious thing, and that an individual who decides to use such force is making a most serious decision, one that ought to be freely made each time.

(4) Would my actions be involving others? A negro in some parts of the south today, for example, has to consider that he would possibly be involving his whole race in violence when he commits an act of force.

(5) Would the use of force in the particular situation involved be likely to have the pernicious effect of increasing the likelihood of a continuation of violence, either by "setting off" hostilities, or by aiding and strengthening that moral atmosphere in which violence is so easily bred? I believe that violence under almost any circumstances is likely to breed further violence, and I certainly would not allow myself to commit an act of force of any kind which would not to the best of my belief lead to a diminishing of the chances for further violence.

But even if all the proscriptions of these criteria would not be violated, I cannot say *exactly* where the line ought to be drawn. However, with regard to conscientious objection, it is more meaningful that I believe that I *can* say that I would never, under any circumstances, advocate the ~~form~~ of violent force known as war. War is, in my belief, avoidable; it does necessarily involve the death of countless innocent individuals; it does involve being under [fol. 109] "orders" to kill; it does involve many others besides those who are doing the "forcing"; and it does,

in my belief, have the pernicious effect of strengthening the moral atmosphere that breeds more violence. I also believe that in the war situation the greatest evil involved is always war itself; in my opinion the better way to combat evil is by non-violent methods. I believe that these attitudes toward war and the use of violent force in general stem from my religious convictions which lead me to ascribe the highest sanctity to life and to the dignity and worth of the individual.

Question ten.

Not belonging to a formal religious organization, I believe that some of these categories do not apply to me. As for the others, I would have to say that my answers would depend on (1) what the situation in its entirety was, and (2) what kind of force would be involved. I believe that in my case, the answer to question seven includes the information that is required of question ten.

68

SELECTIVE SERVICE

OFFICIAL BUSINESS

- ☐ Unclaimed.
- ☐ Person unknown
- ☐ Deceased.
- ☐ For better address.
- ☐ Moved-left no address.
- ☐ Refused.
- ☐ No such address
- ☐

POSTMASTER—If not delivered in 10 days, please check reason for non-delivery and return to

Irma Jakobsen
111 Ellwood St
New York 40, NY

(Stamp of Board or Address of Sender)

CERTIFIED MAIL No 889452

POSTAGE AND FEES PAID
SELECTIVE SERVICE SYSTEM

NEW YORK N.Y. P M (SSS-553) 63

SPECIAL DELIVERY

Selective Service System
LOCAL BOARD NO. 17
321 West 44th Street
New York , N. Y.

SPECIAL DELIVERY

Selective Service System
Local Board No. 17
New York City
AUG 6 1963

[fol. 110]

13

[fol. 111]

[fol. 112] IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 31

December 9, 1958

Selective Service System
Local Board No. 17
321 West 44 Street
New York 36, N.Y.

Dear sirs:

I hereby request that the following statement be included in my record with regard to Conscientious Objection:

This is to notify the board that I now wish to formally change my claim from a request for 1-A-O to a request for 1-O.

My views upon these matters were not adopted en toto, but were formed and developed over a period of time. Since the time when I handed in my form 150, I have continued to reflect on these things; and I now find that I cannot with a clear conscience allow myself to participate in *any* form of military service.

I now feel that *any* such participation would represent a destinct compromise with my values and convictions. I would be involved in too many situations and relationships that would be a strain on my conscience that I feel I must avoid; for example:

I feel that I must be willing and able to help all individuals that need help in any situation. I could not with a clear conscience limit my services as a medic to one side.

Even as a medic I would be making a positive and concrete contribution to military aims, aims with which I am opposed in my convictions.

I cannot give up the moral responsibility for my actions to professional soldiers, especially during situations in which such responsibility is so important.

I cannot allow myself to condone publically by my par-
[fol. 113] ticipation an institution which is based on fundamental values, convictions, and action-patterns that are so diametrically opposed to my own.

Please accept this letter as a formal request for a change in claim. Thank you.

/s/ Arno Jakobson

Selective Service System
LOCAL BOARD NO. 17
December 9, 1958
321 West 44th Street
New York 11, N. Y.

[fol. 114] The 43 pages of notes presented here are reflections on religion that I wrote recently for my own sake. Though not all of what is written here is *directly* apropos of questions that representatives of Selective Service will be primarily interested in, it does represent my general feelings on these matters, and it therefore may concievably be of some use to someone with regard to a decision on my case. I would therefore like it to be included in my record for what it is.

/s/ Arno Jakobson

#50-17-35-417

Selective Service System
LOCAL BOARD NO. 17
December 9, 1958
321 West 44th Street
New York 11, N. Y.

[fol. 115]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 32

Due to my Conscientious Objection, I find myself in the difficult and highly annoying position of having to sum up my religious views. Just why do I feel the way I do about human life? How do these things constitute "religion"? It is unfortunate to have to attempt something at 23 which would normally involve a Lifetime's slow development. But; now is when the problem has presented itself.

No formal religious affiliation, no minister's influence, no Bible, no demonstratable history of verbal expression of my ideas; and yet I dare to claim that my Objection has its basis in "religion". The question is: how? I will not be so foolish as to expect to be able to write down a complete and unified answer here. But if I put down, as best as I can, all the thoughts that I may already have on these matters, as those thoughts occur to me; I may yet succeed in making clear the essence of my position, however fragmentary and *incipient* that position may be at this time.

* * * *

1.

I suppose I had better begin by making some general points, which will serve as a foundation for what will follow.

First; what do I mean by "religion"? To me, religion refers to the *sum and essence of one's basic attitudes to the fundamental problems of human existance.* It refers to the relationship that one feels oneself to bear to the Universe; it refers to one's basic "attitudes to Life".

More specifically, it refers to the Answers that an individual evolves to such questions as: "What shall I choose as my fundamental purposes in this Life, considering my human and particular Conditions and Limitations?" What obligations do I have to myself? to those

close to me? to Mankind in general?", "What shall my attudes to the Evil in society be?", etc. In other words, by religion I mean the vital (in the sense of how much [fol. 116] they affect one's Life) attitudes that an individual comes to accept, as his conception of the nature of Reality develops, toward the major human dichotomies of Life vs Death, Good vs Evil, Order vs Chaos, Willfulness vs Fate, Self-Assertion vs Self-Transcendence, etc. Religion, then, refers to the *subjective* attitudes of people to the Givens of Existance.

2.

What is Godness? Godness is That Which is the Ultimate Cause for the fact of the Being of the Universe. Is there Godness? Of course there is Godness; to deny that is equivalent to denying the fact of the Being of the Universe. Therefore once one affirms the fact of the Being of the Universe, one automatically affirms Godness. For anything that Is, has an Ultimate Cause for its Being. What is the nature of Godness? No one can know. Is Godness Within the Universe, and synonymous with the Totality of the Universe? Or is Godness Outside the Universe? No one can know. Does Godness relate directly with human beings? No one can know. All these questions are Speculation. And all their human concomitants —like the question of an Afterlife—are Speculation.

In the traditional conception of religion, an individual accepts A,B, and C to be True about "this World", and D,E, and F to be True from among the many Speculative possibilities concerning "the Next". On the basis of these, he forms (or accepts) his fundamental attitudes to Life X,Y, and Z. In the non-dogmatic conception of religion, on the other hand, an individual forms *his* fundamental attitudes X,Y, and Z only on the basis of the A,B, and C that he feels to represent the limits of what he, as a human being, can know.

3.

But the problem of the individual's relationship to Godness doesn't only exist on the intellectual level. It also exists, and primarily so, on the level of "feelings". Therefore, I would like to consider now, in some detail,

[fol. 117] one aspect of the Self-Transcendent feelings of Man: the question of the Basic Transcendental Relationship, as it applies to the non-dogmatist.

Aside from the many transcient but concrete relationships that a person forms and feels himself to have during the course of his Life, he also comes to evolve a feeling of more fundamental, though abstract, relatedness—a feeling that is not dependent upon the particular circumstances of his Life, but one that is always with him, that is part of what he means when he says "I", that is a meta-conscious in nature. The Self does not exist in a vacuum; it exists in a World. It exists as an integral part of a World. And because of our human powers of reason, intellect, and sense; this "related" status of the Self does not only exist as an objective fact, but also as a subjective set of feelings within the individual. The Self is always felt as something that bears certain, fundamental, *definitive* relationships to things outside of itself. These felt fundamental relationships perform the psychic function of ascribing to the individual a position in the Order of things. Among these meta-conscious feelings are the feelings of relatedness to Godness, to that Ultimate Principle from Which our Order, in all its particular aspects, springs.

This felt Transcendental Relationship to Godness can point in two directions from the Self: vertically, towards Godness directly; and horizontally, towards Godness through Mankind and the World. In the vertical Transcendental feelings, the Self is felt to bear a direct, one-to-one relationship to Godness, though (especially in the case of a non-dogmatist) the other end of this relationship is often felt as a vague, amorphous, unpinpointable "something". In the horizontal Transcendental feelings, the Self is felt to bear an indirect relationship to Godness: a relationship whose vital current is forced to move through the entire human and natural World that surrounds the subjective Self; a relationship whose vital current can never reach Godness fully and directly. It may [fol. 118] be compared to the waves that emanate from a pebble dropped into a sea: they will slowly spend their energy as they move further away from the center, and will be prevented by their very Limitations from ever

reaching the Shores; especially when their progress is further impeded by the complications resulting from other waves emanating in that same sea from 250 billion other pebbles dropped near the first one.

I tend to believe that both these fundamental Transcendental feelings are at least potentially present in all people. But my point is this: that these two feelings tend to be mutually exclusive; that one of them tends to be primary in a given person over the other; that perfect equilibrium between them is rare if possible at all; that their respective strengths in the psyche vary inversely with each other. In other words; the more one senses a direct, one-to-one relationship to Godness, the less one will sense a concrete relationship to Mankind and to the World, and vica versa. Why do I make this generalization? Because each one of these fundamental Transcendental feelings is co-existant with a qualitatively different view of Life; and it seems to me that each one of those views of Life is of such nature as to be incompatible with the other, and thus with the Transcendental feelings that go with that other.

What is the "view of Life" that is co-existant with the vertical Transcendental feelings, and why?

In the vert. Trans. feelings, the primary relationship that the individual feels himself to have as a Being is a direct, one-to-one, *realizable* relationship to Godness. In his very meta-consciousness, such an individual is conscious of his Self as being *predominantly and primarily* an entity that exists before Godness. All human and natural relationships that he bears are felt to be secondary to this Basic Relationship, from which he derives his Self-definition as an existant, and his Goal as a human being.

[fol. 119] But in order for a felt relationship to have such basic importance to an individual, it must be active and dynamic in nature. Important relationships can never be passive; they always tend to move on, to change. This is true even of these fundamental meta-conscious relationships. But how is a direct relationship to Godness to keep from becoming passive? As the individual involved is after all a human being existing under human

Conditions in this particular World, it would seem that such a relationship can only be passive in nature, as only mundane relationships, however abstract, can be dynamic in this "Euclidean World". This is true especially in the case of a non-dogmatist who might be possessed of these feelings; as for him prayer can only be interpreted as a behavioral *symbol* for a metaphysical urge, that would not cause the felt relationship involved to become, by vitue of such prayer, dynamic. Thus, the question is; how can an individual who is possessed of the vert. Trans. feelings cause his felt relationship to Godness to satisfy his urge to have all his important relationships be dynamic, to have them move towards further and further closeness?

But here is the "catch": in the above statement "the individual is conscious of his Self as being predominantly and primarily an entity that exists before Godness", it is important to notice that there are in reality three terms involved that are relating, and not only two. The three terms are: the subjective Self treated as a subject, the subjective Self treated as an object, and the Godness. The Self, in being "conscious of itself", is relating with itself; and above this relationship there is a third factor, the Godness, which is relating with the dynamics of the first two. Thus, in the vert. Trans. relationship, there are two concurrent relationships that are felt as occurring at the same time: one is the Self-Itself relationship that is implied in the fact of Self-consciousness; and the other is the "Transcendental" relationship between the Self-conscious Self and the Godness.

[fol. 120] How can the vert. Trans. Relationship progress towards further closeness? Since the whole process takes place on a subjective level in this particular World, the Godness itself is an invariant factor. Therefore any change that takes place in the relationship must be achieved with respect to the variant factor; that is, with respect to the Self-conscious Self itself. And this is exactly what happens in this situation: the active aspect of the vert. Trans. feelings is involved in the dynamics of Self-consciousness. It is achieved by means of a change that takes place in the Self-conscious Self itself, but one that is of such a nature that it is felt to bring the entire

Self-conscious Self closer to Godness. How does this change in the Self present itself to the individual involved? It presents itself as a Self-imposed, ever-continuing *psychic emphasis on Spiritual Growth.*

Now, without going into a detailed discussion of what I feel Spiritual Growth *really* to be, I will be satisfied to indicate only that I believe that Spiritual Growth is a dynamics involving the attainment of Truth (with the capital T emphasized), and that in the case of an individual who is possessed of the vert. Trans. feelings, this dynamics usually presents itself as the effort to "understand God's Ways" as taught to the Self through its reactions and relations with "Life". And this leads to the point which was the goal of the entire above discussion: that to an individual in whom the vert. Trans. feelings are primary, the important factor of *all* human and natural experiences is *how those experiences contribute to the individual's Spiritual Growth.* All experiences of such individuals are subjected—though perhaps not always on a conscious, verbalized level—to this criteria; for Spiritual Growth, in this sense, is *the* means whereby the most important meta-conscious Relationship that the individual feels himself to possess can become active. In this way, the vert. Trans. feelings, when primary, result in a kind of psychic *shift of emphasis inward* as far as all mundane relationships are concerned. It is this inward shift [fol. 121] which affects and conditions such an individual's "view of Life" in such a way as to give it its general character.

How does Life seem to present itself to such an individual? From my experiences with people who feel the vert. Trans. Relationship most strongly (mostly Christians); I would say that it is *as if* the World presents itself as being a kind of highly advanced, 360-degree movie screen that continuously surrounds him, shoving more-or-less clear images "at him" every so often from out of a more-or-less hazy "background area". It is *as if* these images and this screen were put there, with a conscious purpose "in mind", for his sake, in order that he have something to "cope with" during his stay on earth. It is *as if* his freedom were given him just for this

activity, for his use in his free determination of the direction of his Spiritual Progress.

I do not say that such individuals necessarily think in these terms; I am only trying to present some analogies to show how I tend to think they *feel* about this life. The feelings I have in mind are not so much conscious ones as they are meta-conscious ones; that is, they serve to determine the structure of consciousness itself. . . .

It seems to me that this kind of egocentricity is as inherent in a psychic emphasis on Spiritual Growth as such a psychic emphasis is inherent in the vert. Trans. feelings. And it also seems to me that it is perfectly natural for the dominant attitude towards "life" (that is, towards the outside-of-himself) to evolve into a kind of passive "non-differentiation", a kind of lack of *vital* interest in just what sort of movie happens to be playing at any particular point. The emphasis is removed from the idea of changing our mundane surroundings for the better, and is placed instead on the "putting up with" whatever "Life" (which has lost its 3-dimentional quality and assumes instead a 2-dimentional "movie-screen" quality) happens to "offer". What is important is not so much what sort of experiences that one has to cope with, but rather *how* one has coped with *whatever* there was *for* [fol. 122] him. Such people usually develop an unusually harmonious and "philosophical" attitude toward the major (and minor) events of their lives, something that is often misinterpreted as a sign of "strength of character". Does tragedy strike?—"Aha, I percieve then, that my child was run over by a truck; I also percieve that I tend to feel a great sorrow and emptiness inside myself because of this latest unfortunate development: it is this that I must bear next, then, as the Lord giveth and the Lord taketh away . . .". Or does a happier turn of events take place?—"Aha, I percieve then, that my financial problems have been eased considerably by this new job; indeed, it would tend to seem to appear that I can reasonably expect (in all probability), a period of emotional relaxation now during which I may be able to look forward to facing some of the subtiler aspects of Life; and Blessed is the name of the Lord. . . ." Or perhaps there happens

to be a War going on?—"Aha, I percieve then, that there is a War, and that men are butchering each other; and I percieve that all this tends to disturb and frighten me indeed. I also percieve that I am now a soldier, on such and such a side, whose purposes for being on this particular side have been justified by such and such rationalizations; my functions as a soldier require me to behave in such and such ways, which would impose such and such emotional and tactical difficulties upon me. It is these difficulties, then, that I now must cope with, and Blessed is the Name of the Lord, who knoweth all. . ."

It is obvious from the form of my analysis and from what I have said before, that I reject, for myself, the idea of a vert. Trans. Relationship, with its feelings of a direct, realizable relation with Godness that can "detour" the World. The first reason that I reject these feelings is that they imply, when translated into conceptual terms, a kind of knowledge about the nature of Godness that is unknowable under the human Limits. It seems to me that it is important to always attempt to achieve, whenever possible, some sort of harmony between the intellect and the feelings—especially in cases where one of these is to [fol. 123] serve as a springboard for behavior. If an individual is going to *feel* towards Godness as if Godness were (1) separate from and outside of the Universe, (2) an entity that is directly approachable as a point, (3) an entity that is *directly* concerned with human beings as such; and if he then is going to base the fundamental character of his behavior on the feelings; then he ought to be able to posit these characteristics with some degree of certainty in his verbal conceptualizing. Or if he finds that his reason will not permit him to do so, then he ought to make some sort of effort to not base his behavior on his feelings. His alternative, if he consciously allows such a split between his intellect and his feelings to remain unresolved, is to claim that "the feelings can grasp a higher Truth than can the intellect", or some such theory, in which case all his conceptual opinions should become meaningless to him, as any of them could be denied by the same criteria.

The second reason that I reject the vert. Trans. feelings is that they foster an illusary "2-dimentional" view

of Life, which precisely deminishes the possibility of the achievement of the primary Goal of such an individual: Spiritual Growth and subsequent *real* approachment towards Godness. The vert. Trans. feelings are self-contradictory because for the sake of Spiritual Growth they induce one to assume an attitude towards mundane events that makes such Growth impossible. Spiritual Growth is a dynamics that reaches towards Wisdom; and Wisdom itself is a dynamics that reaches towards Truth: Truth with the capital T emphasized to connote the sense of Truth of the unity of things (as opposed to Knowledge, which connotes Truth more in the sense of separate facts.) A true yearning for "Spiritual Growth"—though it too may not exist primarily on the intellectual level—can be thought of as being a yearning that has as its "Star" the Star of Truth, which, like all Stars, can be approached but never quite reached. And, certainly, approaching Truth in this sense does bring one "closer" to Godness, as [fol. 124] it brings one closer to that which Godness is Ultimately responsible for: the Order in the Universe.

If this is more or less correct, then it follows that the prerequisite for the attainment of this "direction of physical change" is above all an intense and vital "pyschic involvement" (as opposed to a mere behavioral involvement) with Reality *as it really is*—with the 3-dimentional World around us; as it is Truth about that World that is the aim. But the dynamics of the vert. Trans. feelings—of the sensing of ones primary relatedness to be towards Godness—presupposes not an involvement with Reality as it is, but only an involvement with reality *as it strikes us.* Such a person does not see the events of his Life in all their 3- dimentional physical and social complexity; because so much of his vision is turned inward, he sees his experiences in a more personal context—as a series of events that are happening *to* him. In other words, he sees a 3-dimentional World in a 2-dimentional way. One cannot attain to Wisdom and Truth with such an outlook; at best one can attain to a kind of emotional equilibrium. And this is the aim not of Spiritual Growth but of psychological growth. It is not difficult to see how a person can be a devout Christian who posits "Brotherly Love" (by which he usually means

not just mere human concern and feelings of existential relatedness, but actual *Love*—Love for all people), and still be able to allow himself to be swept into a contemporary War situation which makes the days of the Roman Circuses look like the Peaceable Kingdom by contrast. Such people do not achieve Spiritual Growth; they do not attain to Wisdom and Truth; they merely manage to find Harmony in Discord, to find Peace Of Mind in a civilization of bestial destruction. And what is this but the aim of psychology?

And so, for both objective and subjective reasons, I reject such a primacy of the vert, Trans. feelings. This is not surprizing in view of the way I feel about Godness. To me, the Ultimate Cause for the fact of the Being of [fol. 125] the Universe is something too vast, too unknowable, for there to exist a valid basis for the primacy of the vertical Transcendental feelings. As a human being with human limitations, I feel that I cannot try to approach Godness without first going "through" the World. It is mainly for these reasons that I have up-till now rejected Christianity—even in its "liberal" forms—as a basis for my religious feelings. For such a primacy of the vertical Transcendental feelings has always been *the* differentiating aspect of Christianity; to use the word in any other sense seems to me to be an anomaly.

When the horizontal Transcendental feelings are felt to be primary, on the other hand, there is no fundamental, extra-sensory factor present in the individuals consciousness which would have the effect of retarding his "vital" psychic involvement with the Reality that surrounds him, *as it really is*. His primary meta-conscious relatedness is felt to be towards Mankind—that is, towards all the living, concrete human beings in the World—and towards nature—that is, the Universe; that infinite, mysterious medium in which those living, concrete human beings represent "blips", little concentrations of consciousness. Hence there is nothing that would automatically distort his view of Life. As the World *is* 3-dimentional in nature, so is it *felt to be* without the distorting presence of the vertical Trans-

cendental egocentricity. It is not Life as it strikes him that is emphasized by such an individual, but Life as it is. The World does not present itself as if it were a 360-degree movie-screen that surrounds the individual in his Self-Godness relationship. It presents itself as if it were a Globe in a Universe upon which he and 250 billion other "blips of consciousness" live under certain existential conditions. Such an individual, who finds himself at the subjective center of such a World, does not emphasize, in his mundane relationships, the "Spiritual Growth" he can "get" "from them". Rather he emphasizes those experiences themselves, in all their concrete and complex, 3-dimentional, categorical and normative reality. His mundane experiences are vital ones, [fol. 126] as they are expressions of what he feels to be his fundamental Transcendental Relatedness. And, ironically, this very fact, which allows his worldly relationships to be full and well-proportioned, ultimately provides the possibility for the actual attainment of that which has not become an obsession to him: Spiritual Growth.

It is through this very relating to this motley, 3-dimentional World that he relates to Godness. For there are ways for the individual to get "closer to Godness" *in his mundane relationships*. He can get closer to Godness when he is concerned with those aspects of Reality that are nearer to being Universal and Inherent in the physical, chemical, biological, and psycical Conditions. When an individual looks about him "at Life" from his subjective point of view; he finds it valid to think of some aspects of what he sees as being more or less Given in existance, and others as being more or less Man-made. It may be that there is a Particular aspect to every Universal in Existance, and vica-versa; and that "the lines are difficult to draw". Yet, when the individual is dealing with such things as Life, Death, Health, Talent, Love, Time, etc., he is dealing with things that are primarily Given in Existance; while when he is dealing with such things as politics, economics, fashions, etc., he is dealing with things that are primarily Man-made and transitory. True, it is just a matter of "looking at one thing in two different ways".

But that is just the point; a man who happens to be saying: "In choosing a career I intend to place more emphasis on concrete usefulness to Mankind that on economic or social rewards; as in this Life . . . etc.", is relating more closely to Godness that another man who at the same moment somewhere else happens to be saying: "I wonder if I should buy a Ford this year or save up for an Oldsmobile instead. . . ." And a man who says: "I will not allow myself to be inducted into the armed services because of the way I feel about human Life . . . etc.", is relating more closely to Godness than a man who says: "I wonder if they'll send me overseas; I always did want to travel. . . ."

[fol. 127] I am not trying to imply any derogatory value judgments against Particularistic thinking. Far from it; such thinking is one of the most necessary and satisfying and human aspects of daily living. I am merely trying to hint at a qualitative subjective difference between Particularistic and Universalistic thinking. I am saying that I believe that the more closely one relates to the Universals and Essentials in Life, the nearer one comes, psychically, to that essential Order in the Universe that is so closely connected with the concept of Godness. This is how an individual can relate, though indirectly and incompletely, with Godness "through the World." And, incidently; this is also the basis for what is known as the "religious conscience", as that term applies to a non-dogmatist. A man is obeying a "higher law" than a social or legal one when he is basing his actions on attitudes that stem most directly from the way he feels about the basic Givens in Life. And so I come back to my original definition of "religion".

4.

But now the crucial question arises: Just how do these views lead me to Conscientious Objection? Now that I have rejected for myself both the idea of dogma and the vertical Transcendental feelings, what is there left? Isn't there some basic differentiating choice involved somewhere in my views that would be compara-

ble to the traditional idea of the Acceptance or Rejection of Christ? (or Buddha or Mohammed or whatever the case may be?) If one's "religion" were merely the sum of his fundamental attitudes to the basic problems of human existance, then it would necessarily follow that there is no such thing as non-religiousness; as everyone must have some fundamental attitudes, whether they are conscious or not. That may be true, but all the same, is there no primary "either/or" choice available to the individual who posits no dogma and no vertical Transcendental feelings, the answer to which would provide the foundation for all his other religious attitudes?

I believe that there is such an either/or choice involved [fol. 128] in religion; and furthermore, I believe that this either/or choice has to do with the Acceptance or Rejection of something, as it does in the traditional concepts. In a traditional religion like Christianity, the individual finds himself faced with a certain kind of *description of the nature of the human and natural Universe;* a description which includes the results of observation, of reason, of dogma, and of revelation. In being confronted with this religion, with this descriptive matter, he is being told in effect: "This, categorically and normatively, is what the Universe is all about." In being urged to take this religion "into his heart; he is being asked, in effect, to *Accept the World.* That is, he is not only being urged to agree that "yes, this is what the World is all about"; he is also being urged to Affirm the World psychically, to say a kind of subjective, metaconscious "yes" to the whole business, to feel himself to be an integral and *willing* part of this Order. Behavior and attitudes that are consistantly anti-Christian are connoted with a Rejection of the religion itself; from a Christian point of view, anti-Christian behavior and attitudes are interpreted as a Rejection of *the* Order of the Universe, as an unwillingness to play a willing part in *the* Order of things. And from this Christian point of view, such an interpretation is quite valid.

In my own "non-dogmatic" views, the individual finds himself confronted with the same two kinds of possibilities. He can Accept the World psychically, or he can Reject it. Only, of course, by the term "the World" is now meant a different set of descriptive matter.

These concepts can best be illustrated by referring to a novel whose central problem happens to be just this point; Dostoevski's "The Brothers Karamazov". In this novel this question is illustrated mainly by the sharp contrast presented between the character of Ivan on the one hand, and Alexy and Zossima on the other. Aside from their other functions in the book, they may be thought of as being personifications of each of these two basically opposed attitudes toward Life. That this was meant to be the central problem of the book is il- [fol. 129] lustrated by, among other things, the fact that the "action" of the novel is halted at the most crucial point—just before the murder—to allow for the presentation of about 100 pages of discussion, half consisting of Ivan's remarks to Alexy in the tavern, and the other half consisting of Zossima's death-sermon. And what was all this discussion about? It was about what I have called "religion", about fundamental attitudes to the basic problems of human Existance; or, as Dostoevski himself put it, about "the eternal questions". It was "about" the basic either/or choice between Accepting and Rejecting Life.

One important point to notice in the two viewpoints presented is that they are both based on the same picture of Reality, the same view of "the World". Both saw the same human Conditions of Existance, the same civilization, the same Goods and Evils in people and in society. But each came to different psychic conclusions on the basis of this "the World" that they both saw. In this way, the novel illustrates the fact that this basic choice is not directly dependent on ones view of Reality itself; that it is a problem that exists on the subjective level only.

Another important point to notice is that their respective choices were basic ones; not existing merely on an intellectual "opinion" level, but permeating their

whole consciousness, affecting every aspect of their lives, coloring everything that they felt or did. In this way the novel illustrates the fundamental character of this choice.

This question, then—the choice with which every individual is confronted of either Accepting or Rejecting the Order of the Universe as it presents itself to him—is to me the basic problem of religion. My own attitudes of Conscientious Objection spring directly from my own position, my own "answer", to this question.

What does psychic Rejection of Life mean?

To answer this one needs hardly do more than to ex- [fol. 130] amine the position of Ivan that is presented by him in the tavern, as this is such a fully developed expression of the extremes of this position. It is important to bear in mind, however, that Ivan is presenting his views to his truly Christian brother Alexy, and that he therefore presents them in a form which would be meaningfull to a Christian listener. It is not hard, though, to get to the bottom of his position:

> "and so I accept God and am glad to, and what's more I accept his wisdom, his purpose—which are utterly beyond our ken; I believe in the underlying order and the meaning of life; I believe in the eternal harmony in which they say we shall one day be blended. I believe in the Word to Which the Universe is striving, and Which Itself was 'with God', and Which Itself is God and so on, and so on, to infinity. There are all sorts of phrases for it. I seem to be on the right path, don't I? Yet, would you believe it, in the final result I don't accept this World of God's, and, though I know it exists, I don't accept it at all. Its not that I don't accept God, you must understand, its the World created by Him I don't and cannot accept. . ."

Ivan then goes on in the next chapter to present his "justification", so to speak, for this Rejection of his. He claims that he Rejects the World because of the Evil in it, especially as that Evil is epitomized in the sufferings of innocent children:

"But then there are the children, and what am I to do about them? Thats a question that I can't answer. For the hundreth time I repeat, there are numbers of questions, but I've only taken the children, because in their what I mean is so unanswerably clear. . . . I understand solidarity in sin among men. I understand solidarity in retribution, too; but there can be no such solidarity with children. And if it is really true that they must share responsibility for their fathers' crimes, such a truth is not of this world and is beyond my comprehension. Some jester will say, perhaps, that the child would have grown up and sinned, but you see he didn't grow up, he was torn to peices by the dogs, at eight years old. Oh, Alyoysha, I am not blaspheming! I understand, of course, what an upheaval of the universe it will be, when everything in heaven and earth blends in one hymn of praise and everything that lives and has lived cries aloud: 'Thou art just, o Lord, for Thy ways are revealed.' When the mother embraces the fiend who threw her child to the dogs, and all three cry aloud with tears, 'Thou art just, O Lord!' then, of course, the crown of knowledge will be reached and all will be made clear. But what pulls me up here is that I can't accept that harmony. . . . You see, Alyoysha, perhaps it really may happen that if I live to that moment, or rise up to see it, I, too, perhaps, may cry aloud with the rest, looking at the mother embracing the child's torturer, 'Thou art just, O Lord!' but I don't want to cry aloud then. While there is still time I hasten to protect myself and so I reject the higher harmony altogether. It's not worth the tears of that one tortured child . . . because those tears are unatoned for. They must be atoned for, or there can be no harmony. But how? How are you going to atone for them? Is it possible? By their being avendged? But what do I care for avenging them? What do I care for a hell for oppressors? What good can hell do, since those children have already been tortured? And what becomes

of harmony, if there is hell? I want to forgive. I [fol. 131] want to embrace. I don't want more suffering. And if the sufferings of children go to swell the sum of sufferings that were necessary to pay for truth, then I protest that the truth was not worth such a price. I don't want the mother to embrace the oppressor who threw her son to the dogs! She dare not forgive him! . . . I don't want harmony. From love of humanity I don't want it. I would rather be left with the unavenged suffering and unsatisfied indignation, *even if I were wrong.* Besides, too high a price is asked for harmony; its beyond our means to pay so much to enter on it. And so I hasten to give back my entrance ticket, and if I am an honest man I am bound to give it back as soon as possible. And thats what I am doing. Its not God that I don't accept, Alyoysha, only I most respectfully return Him the ticket."

Ivan's attitude brings to mind Fitzgerald's quatrain from the Rubaiyat:

> "Ah Love! could you and I with Him conspire
> To grasp this sorry Scheme of Things entire,
> Would not we shatter it to bits—and then
> Re-mould it nearer to the Heart's Desire!"

And yet, psychic Rejection of Life in its totality does *not* mean a rejection of all the particular elements in it. A friend asked me recently, aghast at this possibility: "But Good God, how can a person go on living at all without 'accepting' Life?" Well, how did Ivan "go on living at all"? He himself answers that question:

> "Though I may not believe in the order of the universe, yet I love the sticky little leaves as they open in the spring. I love the blue sky, I love some people, whom one loves you know sometimes without knowing why. I love some great deeds done by men, though I've long ceased perhaps to have faith in them, yet from old habit one's heart prizes them."

Actually, of course, Ivan's position is not at all as pure as he is trying to make out to himself—there is even

at this point the beginnings of a split between his feelings and his intellect which is eventually to cause his psychological downfall. But Dostoevski's resolvment of the problems of Ivan in particular are not as important to me right now as his presentation—at this point in the novel—of the position of psychic Rejection of Life in such dramatic conceptual terms. How does a Rejector "go on living at all"? He goes on living because, though he can Reject Life in its totality, he can still at the same time, even without being able to explain why to himself, accept some of the particulars of that Life: his loved ones, his favorite music, doing crossword puzzles, his favorite foods, etc. He can concentrate his psychic [fol. 132] energy around such several "points of interest". In this way "Life" is possible as long as *some* relationship with *some* of these points is available.

It can be seen—to jump to another aspect of this position—how it can hardly seem worthwhile for such an individual to spend much time and energy in actively Upholding and protecting whatever is Good in his particular civilization. If Life itself is Rejected as being basically unworthwhile except for several "points of interest" in it, it can hardly seem worthwhile to spend ones efforts in opposing the particular Evils with which ones particular society abounds, especially when so much of ones psychic energy is directed to those points. I would think that such a person is likely to remain fairly passive and uninterested in the "vital currents" about him, except perhaps when some of those "vital currents" happen to affect one of his "points of interest". As for my friends aghast question as to how such a person can go on living at all; I would tend to believe that the great majority of thinking people in contemporary society manage to "go on living" in this manner. In fact, it can easily be argued that, statistically speaking, this is a natural characteristic of over-large societies that are going through an extended and highly destructive period of cultural Transition. Anyway, I tend to believe that Rejection is by far the more popular of the two.

What is psychic Acceptance of Life?

Again, the Acceptance presented in "The Brothers Karamazov" is an Acceptance of the Christian "the World" (though it is a highly purified Christianity, to be sure), and it is presented through the mouth of a character who can only be described as "a true Christian" in every sense of the word. Yet it is possible to look for what is essential subjectively in Zossima's words:

> "'Gentlemen,' I cried suddenly, speaking straight from my heart, 'look around you at the gifts of God, the clear sky, the pure air, the tender grass, the birds; nature is beautiful and sinless, and we, only we, are sinful and foolish, and we don't un-
> [fol. 133] derstand that life is heaven, for we have only to understand that and it will at once be fulfilled in all its beauty, and we shall embrace each other and weep.'"

Zossima's Acceptance of Life is as extreme as Ivan's Rejection of it:

> "Work without ceasing. If you remember in the night as you go to sleep, 'I have not done what I ought to have done,' rise up at once and do it. If the people around you are spiteful and callous and will not hear you, fall down before them and beg their forgiveness; for in truth you are to blame for their not wanting to hear you. And if you cannot speak to them in their bitterness, serve them in silence and in humility, never losing hope. If all men abandon you and even drive you away by force, then when you are lift alone fall on the earth and kiss it, water it with your tears and it will bring forth fruit even though no one has seen or heard you in your solitude. Believe to the end, even if all men went astray and you were left the only one faithful; bring your offering even then and praise God in your lonliness. And if two of you are gathered together—then there is a whole world, a world of living love. . . ."

Both Ivan and Zossima recognize the same World about them, the same personal and social Goods and Evils. But while Ivan Rejects Life on the basis of what they both see, Zossima Accepts Life on that basis. Zossima gives the same emphasis to the special problem of children; only from the point of view of Acceptance it comes out like this:

> "The peasants are rotting in drunkeness and cannot shake off the habit. And what cruelty to their wives, to their children even! All from drunkeness! I've seen in the factories children of nine years old, frail, rickety, bent, and already depraved. The stuffy workshop, the din of machinery, work all day long, the vile language and the drink, the drink—is this what a little childs heart needs? He needs sunshine, childish play, good examples all about him, and at least a little love. There must be no more of this monks, or more torturing of children, rise up and preach that, make haste, make haste!"

Zossima's death scene clearly demonstrates how much the old monk loved Life:

> "He seemed suddenly to feel an acute pain in his chest, he turned pale and pressed his hands to his heart. All rose from their seats and hastened to him. But though suffering, he still looked at them with a smile, sank slowly from the chair on his knees, then bowed his face to the ground, stretched out his arms and as though in joyful ecstasy, praying and kissing the ground, quietly and joyfully gave up his soul to God."

But the important point as far as this paper is concerned is what does Acceptance mean from a non-dogmatic viewpoint, from a non-Christian position? Or, more accurately, what does Acceptance mean to me? [fol. 134] The psychic Acceptance of Life means the psychic Affirmation of the basic Blessedness, the basic Goodness, the basic "Yes-ness", of the fact of ones Being in this World, "in spite of it all". It is psychic in the sense that it exists primarily as an integral part

of the "I", as a continuous characteristic of meta-consciousness. And, of course, by "the World" I mean the "the World" as it appears to a non-dogmatist; that is, what one Accepts does not include such Speculative possibilities as heaven and hell, reincarnation, nirvana, etc. It only includes what this particular Existance offers to those who are in it.

5.

It is completely invalid to make any value judgments as to the absolute superiority of either one of these positions over the other. It is invalid because each of these can only be criticized from either its own point of view or that of the other; there is no "outside" upon which to stand in order to compare the two positions. It is impossible neither to Accept nor Reject Life. And so any criticism has to be made either from the standpoint of Acceptance or from the standpoint of Rejection. All possible criteria are contained in whatever position the criticizer already happens to represent; that is, this choice preceeds, qualitatively speaking, all criteria. For example, take the position of Rejection. It cannot be automatically criticized as being shallow, as Ivan's remarks in the tavern clearly demonstrate. Nor can it be automatically criticized as being ignoble, as Ivan's remarks again clearly demonstrate (What could be more "noble" than Ivan's position in the tavern?). Nor can the position be criticized on Ethical grounds, for, as I wish to demonstrate later, the prerequisite for Ethics is the psychic position of Acceptance. Nor is it even valid to condemn Rejection on psychological grounds; it would be meaningless to say to an Ivan: "See here; your attitudes are essentially self-destructive and are not at all conducive to your general well-being and happiness!" For he would only reply with a benign [fol. 135] grin: "Yes, I know; isn't it wonderful?" No, any normative comparison of two possibilities requires the existance of an "outside" to both, and here there is no such outside; each position is a complete and self-enclosed system, each encompasses all of Existance within itself.

Then how does an individual come to represent and exhibit one of these positions as opposed to the other? And how does Change between them take place? The answer is that nobody knows; and moreover it is extremely likely that nobody will ever know. Not, at least, until the problem of the exact relationship between Free Will (which is posited on the basis of certain aspects of the fact of Self-consciousness) and Determinism (which is posited on the basis of certain aspects of the fact of statistics) is fully resolved.

6.

Having established that the psychic position of Acceptance means to me the total, psychic Affirmation of the basic Blessedness of the fact of ones Being in this World, "in spite of it all"; it now remains for me to try to indicate how this position led me to make my decisions as to Conscientious Objection. To do this, it is necessary to consider this attitude in more detail from several points of view, in order to examine some of the relationships that I believe exist between this position of Acceptance and certain related problems. To give each of these connections the thought and space they deserve would be impossible for me; yet, even at the risk of further fragmentation, it would be worthwhile for me to attempt a brief survey of some of these relationships, as they might occur to me, one by one:

(1) *Acceptance and passivity*—Acceptance does not mean passivity; it does not mean the equal acceptance of all the particulars of Life, even though it does mean the Affirmation of the Blessedness of the fact of Life as a totality. It does not mean the denying of the existence of Evil; it does not mean the acceptance of Evil. By my use of the word "Acceptance" I do not mean to imply the kind of pas- [fol. 136] sivity that is, for example, the logical subjective result of Mysticism (in its "pure" form of complete Self-Transcendence); which in reality is even more of a Rejection than even Ivan's, as it is a complete negation of the entire human level of Reality. Acceptance does not mean indifference to what is going on "out there." On the contrary, the very fact of the existance

of these two possibilities presupposes a very vital interest in what is going on "out there", as The Brothers Karamazov clearly demonstrates. Passive indifference is incompatible with a vital interest in Reality.

Then just what is it that one "Accepts"?

Acceptance is based on a subjective destinguishing between those aspects of Life that are Given and those that are Man-made. It is as if "Existance" and "Civilization" represented two different things. Actually, of course, they are not separate, but are merely two different aspects of the same thing; they are related to each other as Matter is related to its Form. Civilization is nothing but the Form taken on by Existance at any particular point of time. And yet, as I have said, there is a valid subjective basis for the differentiating between Existance and Civilization; as some aspects of Life present themselves to us as being more absolute and unchangeable and others present themselves to us as being more relative and changeable. The facts of Mortality, Corporeality, and all the other human Conditions, are absolute and unchangeable aspects of Life, while the political and economic systems prevalent at any particular point, fashions, and other things, are relative and changeable aspects of Life.

What is it that the Acceptor Accepts? He Accepts the Givens of Existance—"Life itself"—and he Accepts the fact of Civilization in general, and he Accepts those Forms of his particular civilization that are not detrimental but are conducive to the well-being of those Givens of Existance in all their concrete forms. To Ac- [fol. 137] cept Life is to Affirm the Worthwhileness of Life, Health, Talent, Reason, Love, etc.; and to simultaneously actively oppose those elements in Civilization which are detrimental to these as they exist in their concrete forms as characteristics of concrete people. Thus Acceptance is not equivalent to passivity, but rather involves a firm though compassionate opposition to Evil.

(2). *Acceptance and Brotherliness*—The point that I now wish to make is that the psychic position of Ac-

ceptance is inseparable from the attitudes that are commonly called by the terms "Brotherliness" and "Altruism". Anyone who expresses the position of Acceptance in his own Life will be automatically concerned with the Upholding the Lives of all other individuals in whom he recognizes the existance of the same subjective human Conditions that define and limit his own Being. He will feel an existential Brotherhood to all such individuals; and he will be vitally concerned with the Welfare of all. I believe that this connection is inherent in the nature of the position of Acceptance.

When the psychic position of Acceptance has been purged of all contradictions, when it has been integrated into the whole personality (and this process can be a complex one), it exists simultaneously on several "levels of Being"; specifically, on the meta-conscious, the emotional, and the cognitive. These are, in conjunction with that mysterious "something" called the Will, the conative foundations of behavior. What I mean by the "emotional" and "cognitive" levels is obvious enough. By the "meta-conscious" level I mean all those elements that are an integral part of the Self. The "I" does not exist as a pure, "undefiled", abstract entity. It exists as an entity that is modified and defined by a syndrome of characteristics. These characteristics are a continuous part of the Self; just as the Self itself is a continuous part of Being. They are "meta-conscious" in the sense that they serve as *axioms* and *first principles* that *set limits* upon the general nature of consciousness [fol. 138] itself. I believe that ones position as to the choice of Acceptance vs Rejection is one of these characteristics; and that it is on this level that this "choice" exists as an "either/or" one, that cannot be mediated. Any contradictions with regard to this choice must exist on the other two levels.

Why is Acceptance, when integrated into all three conative levels of Being, inseparable from Brotherliness and Altruism? This is a difficult question to try to answer in conceptual terms, and will require a bit of a digression as a foundation.

The Self exists in a unique, non-Aristotelian situation, in that it exists in total Isolation and total World-immersion *at the same time.* This is true of no other existant in this Universe than the human psyche.

The Self exists as an entity suspended in a World-sea. But because its unique nature as a "concentration of Self-consciousness", it exists in a condition of essential Isolation. Any entity, no matter in what medium it is situated, that can concentrate itself Within itself, can thereby isolate itself from the Without-of-itself. But as the fact of Self-consciousness—which is an inescapable and continuous aspect of Being—implies an ever-continuing concentration of the Self "Within itself"; as Self-consciousness consists of a relationship of the Self *with the same Self:* psychical Isolation is total and infinite. Thus the Self exists as an entity that is essentially separate from the World-sea that surrounds it.

That much has long been recognized in Western thinking. But that is only part of the situation. For the Self can exist only as an integral part of a Whole Person, and part of such a Whole Person are the powers of Will, Reason, Intellect, Emotion, and Sense. These are the Self's *chains to the World.* Because of these chains, the Self does not, and cannot, exist as in a vacuum. It can exist only as an integral component of the human and natural World-sea. It is born into a World-sea, and it if formed through the categories of that World-sea. It is [fol. 139] *nourished*—in every possible sense of the word—by the totality of the social and natural processes that make up the dynamic aspect of that World-sea. It is as if the Self were caught up in an immense, moving entanglement that stretches for miles around it on all sides. All that it can see clearly at first are the nearer parts of this entanglement, but as it grows in Wisdom it becomes more and more aware of the rest of it.

This aspect of the Self's Being—its essential immersion in the World-sea—is as total and infinite as its essential Isolation. As Self-consciousness implies a continuous and total Inwardness of Vision, so does Other-consciousness—which is as inescapable an aspect of Being as the former—imply a continuous and total Outwardness of Vision.

These two "psychical directions" do not "alternate" somehow with each other; rather they both manifest themselves infinitely *at the same time and all the time.* The Self is not only a total "I", but is also a total "We"; even though "I-ness" and "We-ness" stand in diametric contradiction to each other. The situation of the Self thus exhibits a blatant defiance of the Aristotelian dictum that "the same thing cannot be both A and non-A at the same time". This dichotomy exists not only as an objective fact, but also as a *subjective plight.* For the Self is condemned to Being in a state of perpetual dynamic disequilibrium between Self-Assertion and Self-Transcendence; a disequilibrium that must be both expressed and resolved at every moment. Every action, every thought, every feeling, every impulse, must in *some* way both express and resolve this existential dichotomy that can never be negated. In a sense, *the* essential characterizing factor of any particular action, any concrete person, and any general Culture—each on its own level—is *how* it expresses and resolves this dichotomy.

From a subjective point of view—that is, from the point of view of the subjective Self that is itself "caught up" in this situation—this metaphysical aspect of the human Condition presents itself in terms of two Truths [fol. 140] that are *potentially* capable of being grasped by an individual looking out at his World. The first Truth is the fact of the basic Oneness and Similarity of Essence that all "things"—all separate entities—share with each other, simply by virtue of their all being "things" in this Universe. It is as if the subjective Self exists as the acme and center of a hierarchy of existential Similarity that surrounds it. It may be compared to an immense spherical glassy container that is filled with tiny marbles all of the same color, with the qualification that the intensity of the color of these marbles gradually diminishes as they get further and further away from the center marble, which is the most intense of all. With some human beings the subjective Self feels an extraordinary Oneness and Similarity of Essence, with others it feels slightly less, and with still others still less. Thus the intensity of the color of the marbles diminishes; and yet it

remains true that they are marbles all, and all in the same immense container. This "gradation of relatedness" can continue on through the animal kingdom, and then through the plant, and then through the inorganic. Most often, however, this feeling of basic Similarity of Essence will be concentrated on the human level, as the unique experience of Self-consciousness seems to be limited to this Level.

The second Truth is the fact of the Inter-extensiveness of Change. Every living human being is, by virtue of his very being in this World, dynamically entangled in a web of interdependencies and interrelationships with every other living human being, and, to a lessening extent, with every other "thing" in the Universe. This web entangles us from the moment we are born until the last breath has come and gone. Each person's fate is intricately tied up with the fate of every other person, and, to a lessening extent, with the fate of every entity of the World. There is hardly a decision, thought, word, deed, or event that does not have, no matter how indirectly, a reverberating, wave-like effect upon the World at large. [fol. 141] This is especially true on the human level: for every man's life is at every moment his *Sermon to the World;* his publicly-displayed Choice from all the possibilities. People always have an effect on one another; no choice is ever really made in Isolation. Dostoevski has Zossima emphasize this Truth many times in his death-sermon:

> "Every day and every hour, every minute, walk round yourself and watch yourself, and see that your image is a seemly one. You pass by a little child, you pass by, spiteful, with ugly words, with wrathful heart; you may not have noticed the child, but he has seen you, and your image, unseemly and ignoble, may remain in his defenceless heart. You don't know it, but you may have sown an evil seed in him and it may grow, and all because you were not careful before the child. . . ."

This Truth means many things. It means that one cannot do the smallest act of kindness towards a single

child that doesn't concretly affect the whole World for the better. And, on another level, it means that one cannot fight in a single War that doesn't develop, nourish, and spread that moral and intellectual "atmosphere" which is both a necessary and sufficient condition for the breeding of more violence, of further destruction. . . .

These two Truths concerning the human Condition—Similarity of Essence and Inter-extensiveness of Change—are the basis for the inseparable connection between Acceptance and Altruism. But, as I have said, these Truths are only *potentially* recognizable by people. For there are "blocks" to their being grasped; blocks that may exist on each of the three levels of Being that I have mentioned:

(a) On the meta-conscious level, an individual may be blocked from grasping these Truths by his human *capacity to fanaticize.* It is all too true that men are capable, for example, of looking from close range at other concrete, complex, subjective, living human beings, and seeing before them nothing but an abstraction. A total, complex, concrete, living human being who happens to be of negroid racial character, is seen as nothing more than the abstraction "nigger". A concrete, total, complex, living human being who happens by virtue of his spatial locus on the globe to be an "enemy" during some War, [fol. 142] is seen as nothing more than the abstraction "yankee", or "limey", or "gook", or "nippo", or whatever the case may be. The ability to fanaticize is the ability to totally "objectify" something that is actually subjective in nature. Without this human capacity, no violence would be possible without *some* degree of Self-castigation. And the presence of such fanaticism in an individual always severly limits his ability to grasp the fullness of the two Truths discussed.

(b) On the emotional level, an individual may be blocked from grasping these Truths by the presence of certain kinds of "emotional response" habits that can become "etched" into the personality through the interplay of Choice, Environmental Influence, and Repitition. Among these are the passions of anger, hatred, fear, violence, and

other "pure and undefiled" forms of emotional Self-Assertion which seem to be capable of moving from the more natural "particular-emotional-response-to-a-given-situation" plane to the more unnatural "general-emotional-characteristic" plane. When such emotional responses undergo this kind of development, they often come to assure a kind of conative hegemony over the personality, which can severly limit it in many ways, especially with regard to any kind of recognition of the Truths involved here.

(c) On the cognitive level, an individual may be blocked from grasping these Truths by the presence of certain kinds of cognitive illusions and delusions that exist as opinions and beliefs, but which are not consistant with the Reality they attempt to describe. These include theories of human nature (i.e.—"Oh, let's face it, people are always essentially agressive and competitive", etc.) which either directly or indirectly distort the human Reality.

Unfortunately, these kinds of "blocks to Truth" are usually inculcated upon the individual at the very period of his Life during which he is most susceptible to falsehood and distortion: his childhood and youth. Neverthe- [fol. 143] less, they can be dispelled, though only at the cost of much active effort and Will; and often of much pain. The position of Acceptance is psychically co-existant with Brotherliness and Altruism only when these blocks have been for the most part dispelled, for this connection is directly dependent on the ability to grasp these Truths. Empathy: the power of projecting oneself into the subjectivity of another entity, is limited to a scope that is only as wide as the individual's ability to see concretely, and "seeing concretely" means nothing else than possessing a full grasp of these Truths. This is especially true at the human level, the "level" nearest to us; as our closest existential Similarity is with other human beings, and as Social Immersion is the most obvious and recognizable form of World-Immersion.

The psychical catalyst which brings about this marriage is empathy. Once given such a fully developed capacity for empathy, Acceptance becomes subjectively in-

separable from Brotherliness and Altruism. For it is impossible to Affirm the Blessedness of our own Being without simultaneously Affirming the Blessedness of all such Being with which empathy is possible; and it is impossible to wish for the Good for ones own subjective Self without simultaneously wishing for the Good for all such Selves. And conversely, it is impossible under these conditions to become lax in ones Other-Affirmation and Other-concern without simultaneously affecting ones Self-Affirmation and Self-concern in the same way.

On the meta-conscious level, Acceptance in such an individual can only exist in conjunction with the kind of Self-Assertion-Self Transcendence Synthesis which is involved in what is called by the name of "compassion": that particular kind of fellow-feeling that is "accompanied by the desire to help". Compassion is the logical result, on this level, of a fully-developed capacity, for empathy, a full grasp of those two Truths, and the psychical position of Acceptance.

On the emotional level, Acceptance in such an individual can only exist in conjunction with the general emotional fellow-feeling that is called by the name of "sym- [fol. 144] pathy"—sympathy, that is, in its extended meaning of "I rejoice for your joys *as well as* weep for your sorrows." Such is the result of the projection of the emotional aspects of Acceptance into others. That sympathy is basically an emotion can be attested to by all those who have ever felt it. In such an individual, all contradictory emotions—such as hate, anger, etc.—exist only as momentary "responses" brought about in him by Events; as momentary and transitory deviations from the general emotional norm.

On the cognitive level, Acceptance in such an individual can only exist in conjunction with attitudes that can best be summarized as a "benevolent humanism". Any other attitudes would be blatant contradictions.

These three conative characteristics—compassion, sympathy, and benevolent humanism—are the logical results of a marriage between Acceptance and Truth. Taken together, they comprize a subjective description and definition of the term "Brotherliness". The natural be-

havioral results of this Brotherliness is Altruism; and this Altruism is the kind that places "Life" and the Givens of Existance far above any other value—social or personal. It is therefore the kind of Altruism that is vitally concerned with the Upholding of the value of these Givens in the midst of a Civilization that denies them. It is the kind of Altruism that cannot willingly sacrifice "Life"—in others and in oneself—for *any lesser value*; and all values are lesser. It is the kind of creative Altruism that is implied in Schweitzer's term "Reverence for Life".

(3) *Acceptance and Love*—I would like to briefly attempt to make explicit, however, a destinction that I have already suggested; one that I feel to be important to the understanding of the above concepts. I wish to destinguish between Brotherliness and Love.

Brotherliness is based on the universality of the human [fol. 145] Condition. Our Brotherly feelings apply to all people equally, as all are in "the same fix" as far as these human Conditions are concerned. In the Brotherly feelings, we feel an existential Relatedness to all human beings, which causes us to feel committed to being actively concerned, as far as we are able, for the Welfare of each and all. Brothers are, and therefore feel themselves to be, "each others keepers", even when they don't like each other, and they often don't. To Accept Life and to reject Brotherliness is to deny the Truth of the facts of Basic Similarity and Inter-extensiveness of Change. It is to deny that aspect of Life that is Universal in human beings.

To assert "Love" for all people equally, on the other hand, is to deny that aspect of Life that is particular. It is to deny the Differences that people are capable of developing, by means of the interplay of their Freedom and their Environment, out of the Universality that they all share. It is to deny that two of these Brothers can turn out to be as different as Gandhi and John Kaspar. For Love has a different basis and is indeed a different quality of feeling—in spite of the inanities of Fromm—from Brotherliness. Love is a recognition not of the Universal Similarity of all, but of the Particular Similarity of two.

Love is a state of Being that one "falls into", not with anyone and everyone, but with only a certain few. Unlike Brotherliness, it has a very definite exclusive aspect. Exactly what the "criteria" are that cause an individual to "fall in Love with" another individual, no one really knows. Nor does anyone really know just what it is that brings about those strange and unique emotional and meta-conscious characteristics that are associated with "being in Love".

When one is in Love with someone, he or she feels certain things toward the beloved "in spite of oneself" that have no reasonable compliment in the Brotherly feelings. One feels a constant desire to be with the beloved, to listen to the beloved, to share ones Life with the beloved; etc. ad nauseum. It is a "grave" error indeed to attempt to base human Solidarity on Love; people who try are [fol. 146] constantly being ridiculed, and perhaps rightfully so. I remember a conversation I had once with a woman who insisted that she was "filled with Love" for all Mankind. And so I pointed to one of Mankinds Representatives who happened to walk by at that moment, a certain parasitic and malignant misanthrope whom we both knew. I asked her, in detail, whether she really felt the same thing, qualitatively speaking, towards him that she felt for her then recently-acquired husband. It turned out that what she really felt for this fellow was compassion, sympathy, understanding, pity, concern, and The-Best-Wishes-For-A-Successful-Life-Only-May-He-Stay-As-Far-Away-From-Me-As-Possible; which was quite different, believe me, from what she next claimed to feel for her husband. If she "Loved" that fellow, then what was it that she felt for her husband? No, what she felt for that man was a highly developed Brotherly Concern, not Love.

People turn out to be different; but, no matter how disrupting some of these differences may seem to be, they are still Brothers, who "all grew up in the same Family". Brothers can have many reactions to each other; they can feel Love, Like, Dislike, or even Hate sometimes. But they must never stop being actively concerned with each others Welfare, else they will find themselves bearing

the Mark of Cain: Spiritual Isolation. Brotherliness exists above and beyond the human Differences.

But as for Love; it is better to leave it be; it has its place. It is Brotherliness that is inseparable from Acceptance, not Love. Ivan could Love someone also, and there's no use denying it; no matter what aesthetic values there seem to be in theories which equate these.

(4) *Acceptance and Progress*—As the psychic position of Acceptance entails Brotherliness and an active concern for human Welfare, does it also require a belief in Progress? that is, as far as human relations are concerned? Does an Acceptor necessarily have to think of the history of civilization—past, present, and future—as a slow but [fol. 147] steady advancement of Human Solidarity?

I believe that he does not. The history of Human Solidarity has had its major and minor ups and downs, and is likely to continue in this manner as long as human Life exists. Civilization is a complex and ever-changing dynamics of human relationships that constantly produces new problems arising out of new social conditions. "Progress" can be thought of in terms that are entirely relative to particular conditions, especially when ones "concern for Life" is a concern for *actual* Life in concrete *living* individuals.

To consider a brief and somewhat crudely presented example: "Along with the change from Rural-predominate to Urban-predominate Culture that took place in the U.S. over the past 200 years, there was a concurrent change from Consanguineal family patterns to Conjugal family patterns. This process tended to leave a "gap" in the matter o. the Care for the aged; for the old Consanguineal traditions of the Care for the aged by their progeny slowly was felt to be more and more incompatible with the developing Conjugal ideals. Meanwhile, an adequate and widely-organized system of Old Age Centers was not being made available."

Such a widely-organized system might well represent, in this case, human "Progress." But it can readily be seen how Progress in this case does not represent an absolute adancement, but only a "catching-up" with changing conditions. If Old Age Centers are Progress, they

are Progress only relative to certain conditions, and would be useless under other conditions. And indeed, this kind of Progress has been the admirable achievement of all the most conscientious men of history: what they did was not so much a matter of stimulating men as it was of constantly *re*-stimulating them. . . .

Acceptance is not synonymous with Grinning Optimism. Alexy and Zossima and Schweitzer and Chekhov and Tolstoi and Gandhi and all the others, wellknown and obscure, did not have to believe in the inevitability of a New Jerusalem in order to go on. They merely had to feel the Gift of Life as being in itself a Blessing. Once [fol. 148] at this position, it was possible for them to relate to their milieu as they did—with an eye to always working to protect concrete human existance from those social and personal conditions that they saw to be detrimental to it. For Progress to them meant particular Progress for particular people. And no ever-continuing birth of new set-backs could make their task seem unworthwhile to them; for if Life was worth living, then it was also worth Upholding.

(5) *Acceptance and Ethics*—And yet all these considerations by no means simplify the Human Problem of Action: Ethics. What is Ethics? That is to say; what is Ethics from a subjective point of view, how does the Problem of Ethics present itself to the human beings who are faced with it? I will limit myself to a few points:

-Ethics presents itself as a continual need that people feel for making "Right vs Wrong" decisions in connection with the choices with which they are constantly being faced. That is the concrete aspect of the subjective problem of Ethics.

-Ethics also entails the continuous quest to *choose* general criteria, which are meaningful to each individual involved, and upon which he can attempt to base his particular decisions. That is the general and abstract aspect of the subjective problem of Ethics.

-Ethics is not, as it may appear to be to dogmatist, an absolute science of Right and Wrong. Each Ethical decision that a person may make for a particular problem

that confronts him grows out of that particular problem, and is valid for that particular situation only. For no two problems that confront an individual are exactly alike. Ethical decisions must be based on all relevant aspects of the situation involved, and most situations come complete with a fairly complex set of "extenuating circumstances". For an Ethical decision to be valid, it must be based on *all* the factors involved; otherwise it would have been made on the basis of a different prob- [fol. 149] lem than that which is actually there. And as no human being can ever possibly know *all* the extenuating circumstances of his situation, or *all* the results of his decision, each choice must be made with a sense of responsibility, and hope. Actions that are felt to be "wrong" in some situations may be felt to be "right" in others; for "wrong" means "wrong, I think, for me here and now", and "right" means "right, I think, for me here and now". Sometimes such decisions will seem more-or-less clear and obvious to the individual, and other times they will seem more difficult. Sometimes they will seem impossible altogether.

-But the most important aspect of the subject problem of Ethics is the general and abstract one: what are the criteria an individual shall adopt on the basis of which he will try to make his particular ascriptions of "right" and "wrong" in his particular siltuations? That such ascriptions are often difficult to make and sometimes impossible is only to admit the human Fallability and the Complexity of Events. But what criteria does he *wish* to approach in his decisions; what general principles does he *try* to apply? Without such firmly accepted general "Goals for behavior" the whole subjective problem of Ethics would have no meaning.

-These Goals are "relative" only in the sense that each individual must choose them out of his own personal fundamental beliefs. They are "absolute", however, in that each individual finds his own chosen Goals, because of the respect that he has for them, to be fully binding on his conscience. They are also "absolute" in the sense that any choice an individual makes for himself is also implicitly made for the whole World.

-The general Goals for behavior that are the basis for my Ethical decisions have come to be nothing more than my growing desire to Affirm and Uphold that which is basic and Given in Life, stemming directly from my psychic position of Acceptance. Indeed, I cannot imagine such Goals to come from anything else. This general criteria for action presents itself to me simply as some-[fol. 150] thing like: "I really should always try to do, as far as is possible for me, that which is conducive for the well-being of human Existance in its concrete forms; and at the same time I should always oppose the doing of that which I feel to be detrimental . . . . . etc." Or, to put it more succinctly, my general Goal for behavior is, in schweitzer's terminology, "Reverence for Life."

-Thus Ethics, for all its immersion in subjectivity, is still directly dependent on religion, as those general Goals for behavior that are always the basis for an individual's particular Ethical decisions, are always rooted in those fundamental attitudes to Life that constitute his real religion.

7.

To have fundamental attitudes towards Life means also to have fundamental attitudes towards its opposite, towards Death. If by "Life" we mean a basic set of existential Conditions, then by "Death" we must think of the loss of those Conditions. If the Givens of Life, if the fact of ones aliveness, is Affirmed as being Blessed and Good, then Death must seem a tragedy. This is a platitude? Maybe so, but all the same its *the* feeling upon which my Conscientious Objection is based.

Death is not only the loss of those aspects of human Existence that are Man-made—that is, the Forms of ones particular civilization; but also of those aspects of human Existence that are Given—sight, sound, smell, touch, reason, talent, consciousness, etc. Everyone may "know" this, but how many actually *feel* it? Surely not those who torment, not those who kill!

It may be true that the body "continues to exist", in a sense, after Death; as the process that we call Decomposition is only the beginning of an infinitely long

Movement that mingles each man's body with all the other matter in the Universe. And it may be true that some non-physical "something", that may be a part of the total living person, may also continue to have some sort of "existance" after Death. But all these possibilities are no consolation whatever, humanly speaking. For the "I" [fol. 151] the Self-conscious Self, which is the center of the human being, is the result of that mysterious and wonderful Unity that is the living person. Whatever it is that "happens after Death"—and all these things must remain Speculation—it is quite clear that this unique Totality that is the living person, ends with Death. Is Life "Good"? Is the fact of the "I" Being, a Blessing? Then Death is a tragedy. Are all people, no matter what their differences, tied to the same Conditions of Life? Then Death is a tragedy for all.

And yet the fact of Death as a natural Inevitability must come to seem an acceptable tragedy, even for those who love Life most dearly; for without Mortality there could be no Life. The fact of Mortality is an integral component of the fact of the qualitatively transitory character of human Existance. Without Death there could be no Birth, no Change, no source of that "vital energy" that lies at the center of Man's Will, that brings in the "dynamic element" of Being. The fact of Mortality creates *the* human Problem: "What are we to do with ourselves in this short Life?"—without which Life would not be what it is, but something else. Accepting Life involves a resignation to the Inevitability and Elementality of Death.

But this sort of resignation is quite another thing from the acceptance of the willful killing of human beings by other human beings. For though Death as an Inevitability is an elemental aspect of the very "Life" that one Accepts, Dying as an Actuality is always a tragedy. And Dying as an unnatural Actuality at the hands of other men is a double tragedy; as the very transitoriness of Life "in general" makes every actual moment of living, to one who Accepts, a blessing. Willfull killing presupposes the Rejection of Life—the Rejection of Someone's Life for purposes that are sup-

posedly greater than that Life itself. And there are no such purposes. Every killing is a Fratricide, and every Fratricide is a psychical suicide. If there are purposes that are greater than one Brother's Life, then there are purposes that are greater than ones own Life. And how [fol. 152] can one psychically Affirm the basic Blessedness of the Gift of Life and still feel that there are human purposes that are greater?

And so "Reverence for Life", in this sense, is one of the most fundamental components of my conscience. It means that I must see every person as a concrete, subjective living human being. It means that every person's Life is important and worthy of "special" consideration.

8.

And yet I am "opposed to Evil". Just how am I "opposed" to Evil? The word "Evil can have only one meaningful definition in this context: concrete harm done *to* people *by* people. But if this is so, isn't being "opposed" to Evil tantamount to being opposed to Evil-doers? How can I justify the separation of Evil from those who do it?

Unfortunately, things are not so simple. To divide the World into "good guys" and "bad guys" certainly simplifies matters, but it also misses the essential quality of the problem of Evil. I believe that it was Bernadotte who once defined Sin as "loving Evil". Not "doing Evil", but "loving Evil". this was an extraordinarily perceptive idea, for it recognized one of the most ironocal and distressing aspects of the Problem of Evil: that most Evil-doers do not love Evil. Most Evil-doers are not "bad guys", of a different breed than ordinary people; they are none other than those very ordinary people themselves. Then why do they do Evil; why do they harm others? Because they are able to rationalize their actions as being "right". Because they do not recognize the essential interrelationships and interdependencies of all people. Because they can be brought to abstractify concrete individuals. Because their harmful actions are supported by the Forms and dynamics of their social

structure, and by the sincere opinions of all the people whom they respect and love. Because they are socialized to violence and hostility and destructiveness and Isolation by the accumulative effect of a seemingly ubiquitous conglomeration of mass-stimulants. Because most people [fol. 153] simply do not seem to have the strength and/or ability to look upon that vast, mysterious social fabric that surrounds them "from without". Because most people accept the particular state of their civilization as being something that is just as Given and Unchangable as Existance itself. Because when that civilization requires, structures, and supports certain forms of Evil, most people tend to accept these forms simply and unquestioningly—"Ya' can't do nuthin' about it." The problem of Evil is not one that is limited to some people; Evil exists as a highly-supported Potential in all people. How many people can honestly say that if they had grown up in Germany instead of wherever they did that they would have stood up to oppose Nazism?

What shall we do about Sinners; about Evil-lovers? That question is a difficult one, but not half as difficult as the question of what to do about Evil-doers who do not love Evil; especially when their Evil happens to be directed upon us, and upon those whom we love. Shall we kill them? That is the easy answer, the "obvious" answer, the answer that people have repeatedly chosen for centuries.

But the history of bloodshed—especially that of the recent past—has clearly demonstrated that violence is a poor answer to Evil. Violence increases in geometric proportions the actual amount of Evil done. It makes its proponents guilty of the same distorted and dégrading attitudes towards Man and Life as their enemies, as those too for the most part are killing only for "the benefit of Mankind". It stimulates people to further Agressiveness, Hostility, and Spiritual Isolation; which in turn increases their general susceptability to the very manner of forces that influenced them to harm each other in the first place. It lays the moral and intellectual foundations for further Evil. It is literally true that use of violence to combat can (if successful) defeat an Evil-doing enemy

while at the same time appreciably increasing the gen-
[fol. 154] eral Potential for Evil in Mankind as a whole.

No, Evil is violence and violence is Evil; and one cannot oppose Evil by doing Evil. Then how can one oppose Evil? By making overt the very attitudes, feelings, and emotions that are connected with the religious position of Acceptance, Brotherliness, and Altruism. By making examples of ourselves by our own refusal to commit or condone the prevalent socially-patterned Evils. By behaving in accordance with the religious attitude of "Reverence for Life" as far as possible. By contuous thinking about the problems involved. By the development of our knowledge of Non-violent Resistance as an active force.

Sorokin, the Harvard Sociologist, in connection with "an unselfish, creative love in man" (by which he means what I have called by the names of Brotherliness and Altruism) writes:

> "The studies of the Harvard Research Center in Creative Altruism show that none of the prevalent prescriptions against international and civil wars and other forms of interhuman bloody strife can eliminate or notably decrease these conflicts. By these popular prescriptions I mean, first, elimination of wars and strife by political changes, especially by democratic political transformations. Tomorrow the whole world could become democratic, and yet wars and bloody strife would not be eliminated because democracies happen to be no less belligerent and strife-infected than autocracies. Still less pacification can be expected from autocracies. Neither the United Nations nor the World Government can give a lasting internal and international peace if the establishment of these bodies is not reinforced by notable altruization of persons, groups, institutions, and culture.
>
> The same goes for education in its present form as a panacea against war and bloody strife. Tomorrow al growm-up persons in the world could become Ph.D.'s, and yet this enormous progress in education

would not eliminate wars and bloody conflicts. Since the tenth century to the present century education has made enormous progress—the number of schools of all kinds, the per cent of literacy, the number of scientific discoveries and inventions have greatly and almost systematically increased, and yet the international wars, the bloody revolutions, and the grave forms of crime have not decreased. On the contrary, in the most scientific and most educated twentieth century they have reached an unrivaled height and made this century the bloodiest among all the preceeding twenty-five centuries of Greaco-Roman and European history.

The same goes for religious changes if by religion is meant a purely ideological belief in God or in the credo of any of the great religions. One of the evidencies for that is given by our investigation of seventy-three Boston converts "brought to Jesus" by two popular evangelical preachers. Of these seventy-three converts only one changed his overt behavior in an altruistic direction after his conversion. Thirty-seven other converts slightly changed their speech reactions; after their conversion they began to repeat [fol. 155] more frequently the words, "Our Lord Jesus Christ" and similar utterances, but their overt behavior did not change tangibly. The remaining converts changed neither their actions nor their speech-reactions. If by religious revival and "moral rearmament" are meant this sort of ideological and speech-reactional transformation, it would not bring peace or decrease interhuman strife, because it represents mainly a cheap self-gratification for psychoneurotics and sham-religious persons.

The same goes for Comminist, Socialist, or Capitalist economic remedies: for scientific, artistic, legal, or other ways of establishing and maintaining lasting peace in the human universe when these are not backed by increased alturization of persons anf groups. Without a notable increase of unselfish, creative love (as ideally formulated in the Sermon on the Mount) in overt behavior, in overindividual and in-

tergroup relationships, in social institutions and culture, there is no chance for a lasting peace and for interhuman harmony, internal or external.

Our studies show also that this unselfish, creative love, about which we still know very little, potentially represents a tremendous power. (a) it can stop agressive interindividual and intergroup attacks; (b) it can transfor inimical relationships into amicable ones; (c) love begets love, and hate generates hate; (d) love can tangeably influence international policy and pacify international conflicts. In addition to these effects an unselfish and wise (adequate) love manifests itself (e) as a life-giving force, necessary for physical, mental, and moral health; (f) altruistic persons live longer than egostic individuals; (g) children deprived of love tend to become morally and socially defective; (h) love is a powerful antidote against criminal, morbid, and suicidal tendencies, against hate, fear, and psychoneurosis; (i) love performs important cognitive and aesthetic functions; (j) it is the loftiest and most effective educational force for enlightenment and moral ennoblement of humanity; (k) it is the heart and soul of freedom and of all main moral and religious values; (l) its minimum is absolutely necessary for the durable existance of any society, and especially, for a harmonious social order and creative progress; (m) finally, at the present catastrophic moment of human history an increased "production, accumulation, and circulation of love-energy," or a notable altruization of persons and groups, institutions and culture, especially an extension of unselfish love of everyone for everyone in mankind, is a necessary condition for the prevention of new wars and for the alleviation of enormously increased interindividual and intergroup strife.

With a notable increase of our knowledge of love, its potentialities can be used for the service of mankind in immeasurably greater proportions."

As every Conscientious Objector knows, all this is far easier to talk about than to translate into action. There

are hundreds of "Yes, but suppose such and such a situation were to face you . . . .", questions that are impossible to answer easily. But given the religious and ethical attitudes involved, there are some situations in which only one attitude is possible. One of these is War.

War cannot possibly be condoned, given these attitudes, because of the accumulative effect of its many aspects:

[fol. 156] (1) War is characterized by its violent destructiveness. Hundreds of thousands of men, women, and children are maimed and killed; whole cities are destroyed; all the creative energy, all the money and time, that could and should go into the effort to relieve poverty and combat disease, is channeled instead into destructiveness.

(2) Countless thousands of its victims are "innocent" in *any* sense of the word, representing "statistical" sacrifices that are considered a means to an end.

(3) War establishes and auguments that moral, intellectual, and emotional "atmosphere" in which further violenc and bloodshed will ultimately breed. It brings men further away psychically, emotionally and intellectually from a full realization of the essentially Brotherly quality of human Existance; which full realization would be the only real antibody of Evil.

(4) The popular equating of "aggressive" and "defensive" armies with "bad" and "good" is invalid on the subjective level, on the human level. All soldiers, with a few exceptions that exist on both sides, are fighting for the same reasons, basically; because they have been brought and taught to be willing to kill for what they have been told is Mankinds benefit. The destructiveness and "Sinfulness" of an "ism" on the social level cannot be translated into the same kind of guilt on the individual level; and that is precisely the level on which the maiming and killing takes place.

(5) Armies require an individual to turn over the moral responsibility for his actions to professional soldiers. And this during the very kinds of situations in which Ethical decisions are so important for each individual involved.

(6) The special dangers to Mankind due to contemporary technological conditions would make War unfeasable under *any* circumstances, and from the point of view of *any* attitudes that are at all sane and reasonable.

And so on. No; the translating of these religious attitudes of mine into concrete decisions in concrete situations will not be an easy one because of my human [fol. 157] fallibility, because of the complexity of the human problem of Ethics, because of the nature of some of the problems that people are faced with. But on this one matter I believe I can stand fast, even at this early stage of my development.

* * * *

But I had better end here, before I wander too far away from my origional purpose. I have tried to show, in the only terms that are meaningful to me, how my Conscientious Objection is rooted in "religion". And if someone were still not convinced of that, after all this? Then all I can say is that all this, whatever it is, springs from the same Source as religion, answers the same fundamental questions as religion, and produces attitudes that seem to be as binding on the conscience as religion. After that, its all a matter of labels.

[fol. 158] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT NO. 33

Selective Service System
LOCAL BOARD NO. 17
321 West 44th Street
New York 36, N. Y.
(Local Board Stamp)

SUMMARY OF HEARING

At a hearing held on December 9, 1958 before a Member or Members of this Local Board, the registrant JAKOBSON, Arno S., 50-17-35-417 submitted the following new information. Seeks 1AO as conscientious objector at hearing changed request to IO.

The registrant's views are essentially a socialogical or phylosophical view is at most a merely personal moral case. The registrant's beliefs in relation to a supreme being are not based on religious training & belief. His views do not reflect duties as dictated by a supreme being superior to those arising from any human relation. This is illustrated by fact that if he saw another human [fol. 159] about to be injured he would feel impelled to prevent such injury by all means short of violence. However if violence became necessary he, in turn, would use violence; but only to limited extent necessary to restrain the assailant or protect victim. He distinguishes between that need and the situation of wars, saying individual relationship is not comparable to that of himself as part of army as opposed to enemy army because even among enemy there are those who participate in act of aggression & violence as their will. He also feels as part of

all army situations may arise compelling him to disobey orders e.g.—not treating or helping enemy soldiers.
[fol. 160] On basis of statements in file, Board feels he is available for non-combatant military service & he is classified 1AO.

[Handwritten]

[fol. 161] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SEAL]

GOVERNMENT'S EXHIBIT NO. 35

SELECTIVE SERVICE SYSTEM

Selective Service System
LOCAL BOARD NO. 17
321 West 44th Street
New York 36, N. Y.
(Local Board Stamp)

In reply, refer to:

Re: ARNO JAKOBSON # 50 17 35 417

The appellant appeared before the Board for the purpose of pressing his claim for a 1AO classification. At the hearing he explained that since requesting that classification, he had determined in his own mind that he could not in good conscience serve even under a 1AO because a situation might arise where drugs were available to treat only our men, and he would be ordered to limit them accordingly. He would refuse to deny treatment to the enemy.

He was questioned at great length upon his beliefs. The members of the Board were satisfied that he was honestly and properly a case for 1AO. They did however reject the claim of 1O. The registrant accordingly appeals.

The undersigned was present at the hearing. The position of the Board is summarized in the following finding of the chairman:

"The registrant's views are essentially sociological or phyloscphical or at most a purely personal moral code. The registrant's beliefs in relation to a Supreme Being are not based upon religious training and belief. His views do not reflect duties as dictated by a Supreme being superior to those arising from any human relation. This is illustrated by the fact that if he saw another human being about to be injured, he would feel impelled to pre-

vent such injury by all means short of violence. However if violence became necessary he in turn would use violence; but only to limited extent necessary to restrain the assailant or protect the victim.

He distinguishes between that view and wars, saying the individual relationship is not comparable to that of himself as part of an army opposed to the enemy army, because even among the enemy there are those who participate in the act of aggression and violence against their will. He also feels that as a part of our army, situations might arise compelling him to disobey orders—e.g. not helping or treating enemy soldiers.

On the basis of all the statements in the file, the Board feels he is available for non-combatant military service and he is classified 1AO."

Respectfully submitted,

/s/ Fred S. Weitzner
FRED S. WEITZNER GAA

To the Board:

WHY HAVEN'T WE A COMPETENT STENOGRAPHER IN EVERY INSTALLATION? FSW

[fol. 162] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 40

[SEAL]

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D. C.

Address Reply to the
Division Indicated
and Refer to Initials and Number

March 16, 1960

Chairman, Appeal Board, Southern
District of New York, Panel #2
Selective Service System
205 East 42d Street, Room 1100
New York 17, New York

Re: Arno Sascha Jakobson
Conscientious Objector

Dear Sir:

As required by section 6(j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the captioned matter and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Mr. James H. Halpin, a Hearing Officer for the Department of Justice.

The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Resume of the Inquiry attached hereto and made a part hereof.

Registrant was born in Berlin, Germany, on August 22, 1935. His parents are of the Jewish religion and the registrant although formerly of that religion is not active in any religion. He graduated from the High School of Music and Art in New York City in January 1953, rank-

ing 11 in a class of 167. He later attended the City College of the City of New York without graduating and also took courses at Columbia University. His SSS Form [fol. 163] 100 received by his local board in September 1953 made no claim of conscientious objection but claimed a physical disability consisting of a "back condition." His SSS Form 150 received by his local board in April 1958 claimed exemption from combatant but not noncombatant military training and service. His local board classified him I-A-O in December 1958 after a personal appearance by registrant before it and after the registrant had filed a letter with the Board stating that he wished to change his request for a I-A-O classification to a I-O classification. The registrant then appealed the I-A-O classification that the Board gave him.

Annexed hereto and made a part hereof is Exhibit 1 submitted to the Department of Justice in behalf of the registrant.

Registrant appeared before the Hearing Officer at 120 Broadway, New York City, on August 19, 1959 accompanied by a member of the faculty of the Department of Speech of the University of Massachusetts at Amherst, Massachusetts. The registrant told the Hearing Officer that he had no comment or criticism to make on the Resume of Inquiry furnished him with the Notice of Hearing; that in 1941 he came to the United States from Germany by way of Cuba and that he has since made his home in New York; that he is now a citizen of the United States, is single, has no dependents and does not contribute to the support of his parents; that the relations between the registrant and his parents are strained, principally because of the registrant's attitude toward military service, his father feeling that it is the registrant's duty to serve in the Armed Forces and regarding the registrant's unwillingness to do so as a dishonor to the family. The registrant stated that he was brought up in the Jewish religion but left that religion when he was 14 or 15 without interference from his family and that he has not since been affiliated with any religious organization although he has occasionally attended a Quaker meeting in the last two years. The registrant

[fol. 164] stated that he is not an atheist or agnostic and is probably a humanist. He said that he is presently employed as a clerk and mail boy in the Metropolitan Museum of Arts but plans to return to college and obtain an advance degree in sociology with the view of becoming a social worker.

The Hearing Officer reported that the registrant was vague as to the origin of his belief with respect to conscientious objection and he noted that it was on April 18, 1958, the date of the registrant's notification of selection for induction that the registrant wrote his local board stating "I believe I am a conscientious objector and for that reason request Form 150." He noted that the registrant again waited until his appearance before his local board on December 9, 1958 to change his claim from I-A-O to I-O and that the local board rejected the registrant's claim for the reason as stated in the memorandum of the meeting prepared by the local board; that the registrant's views are essentially sociological or philosophical or at most a purely personal moral code. The Hearing Officer reported that the registrant's answer to the Hearing Officer's questions threw no further light upon the registrant's religious training and beliefs; that the registrant's statement entitled "Religion" submitted to the Hearing Officer, Exhibit 1 hereto annexed, did not in his opinion deal with the registrant's religious training but was rather a discourse upon the registrant's concept of morality and conduct. The registrant told the Hearing Officer that he had delayed filing his SSS Form 150 because he had not given much consideration to his views on conscientious objection or thought them through until he had passed his physical examination and that until then he had "frankly hoped I would be 4-F."

[fol. 165] The Hearing Officer concluded that the registrant is not opposed to participation in combatant or noncombatant military training and service by reason of his religious training and belief; that his claim is based upon a personal moral code and that he is not sincere in his claim. He recommended that the appeal of the registrant based upon grounds of conscientious objection be not sustained.

The Department of Justice finds that the registrant's claim is not sustained. It, therefore, recommends that the registrant's claim be not sustained by your Board.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,

/s/ T. Oscar Smith
T. OSCAR SMITH
Chief, Conscientious-Objector Section

[fol. 166] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 41

Resume of the Inquiry

Re: Arno Sascha Jakobson

Conscientious Objector

Registrant was born in Berlin, Germany, on August 22, 1935. His parents are of the Jewish religion and the registrant although formerly of that religion is not active in any religion.

The records of the High School of Music and Art in New York City, show that the registrant attended there from January 1949 until his graduation in January 1953, ranking 11 in a class of 167. A teacher in this school advised that the registrant was an outstanding student of excellent character and she believed he would be sincere in his conscientious objection. The records of City College of the City of New York, show that the registrant attended there from February 1953 to February 1956, leaving without graduating because of financial reasons. An instructor at City College recalled the registrant as idealistic and of good character and he believed he would be sincere in his claim. The records of Columbia University, New York City, show that the registrant took courses in Sociology there in the winter and spring sessions of 1957-1958.

A representative of the Metropolitan Museum of Art in New York City, advised that the registrant has worked there as a clerk in the office service department since May 3, 1956; that he is a loyal, quiet, efficient worker of good character and she believed him to be sincere in his claim. A supervisor of the registrant in the museum advised that the registrant is quiet and of good character; that he has not expressed his views on military service to her but that she believed him to be sincere in his conscientious objection. A representative of a real estate management company in New York City, advised that the

registrant has handled complaints of tenants at one of their properties on West 14th Street in New York City, where the registrant has lived for about nine months and that he is quiet and well behaved but he could not comment on the registrant's claim. The records of a camp organization in New York City, show that the registrant worked for that organization from July 25 to August 28, 1957. A representative of another camp organization in New York City, advised that the registrant worked for that organization during the summers of 1953, 1954 and [fol. 167] 1955, as a senior counselor and that his evaluation reflected that he was a satisfactory worker, friendly and sympathetic with campers. The records of the New York Public Library show that the registrant worked there as a page from March to June 1955. A resident of New York City, advised that the registrant had worked for him from time-to-time for several years doing odd jobs and that he was honest, industrious and of good character; that he had never expressed his views as to military service but he believed him to be sincere in his conscientious objection. A representative of a firm in New York City, advised that the registrant has worked there from January to March 1956; that he was a quiet, well behaved employee who had never mentioned his views on military service and she could not comment on his claim.

Neighbors in New York City, advised that they had known the registrant for many years; that he comes from a fine family, is of good character and never mentioned anything about military service but that he is honest and they believed him to be sincere in his claim. An apartment superintendent in the Bronx, advised that the registrant had lived there from November to April 1959, and was quiet and well behaved, kept to himself and did not associate with any of his neighbors; that he had never talked to the registrant about military service and could not comment on his claim. Neighbors of the registrant in the Bronz, advised that they did not feel qualified to comment on his claim. Neighbors of the registrant on 14th Street, New York City, advised that they did not feel qualified to comment on the registrant's claim.

A reference of the registrant who has known the registrant for about six years advised that the registrant has worked under his supervision at a summer camp in Pennsylvania, during the summer months from 1953 to 1955, and on several occasions had expressed the belief that war is wrong; that he believed registrant to be of a religious nature although not a member of a religious group; that he was a young man of integrity and good character and he believed he would be sincere in his conscientious objection. Another reference advised that he had formerly worked with the registrant in the Metropolitan Museum of Art in New York City, for about two years and that the registrant had originally expressed the opinion that he might not be opposed to noncombatant service but that in later discussions he had stated that after careful thought he had determined that he was [fol. 168] conscientiously opposed to any form of military service; that he believed registrant to be honest, of good character and sincere in his claim. A reference of the registrant advised that he had been a conscientious objector himself and was sure that the registrant was honest and sincere in expressing such belief; that he met the registrant five years ago at a summer camp which was a New York social agency camp and that the registrant had expressed conscientious-objector beliefs the first year he met him; that the registrant had then left the Jewish faith and had given serious thought to his personal moral code; that he had not affiliated with any church but had expressed the opinion that all religion should object to war and killing; that in the fall of 1958, the registrant came to his home in Massachusetts and told him that he was objecting to combatant and noncombatant military service as he felt that serving in noncombatant service would be only helping to do what he, himself, was unable to do; that the registrant was a soul-seeking individual, consistent in his thinking; that he was very considerate of others and had an interest in social work. He had no doubt but that the registrant is sincere in his conscientious objection.

Credited and criminal records were negative.

Prepared: July 10, 1959

[fol. 169] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 42

Religion

Religion consists of a deeply-felt and consistant set of values, based on fundamental attitudes to existance, which are rooted so firmly in an individual's consciousness as to constitute in him a moral imperative of the kind known as "conscience".

Historically and functionally, the term Godness stands for ultimate meaning, ultimate explanation, and ultimate source of value, Godness has its roots as a conception in the efforts to men to understand their position in relation to the universe. It has its roots in their search for the answers to these ultimate questions, and in their intuitive recognition, resulting from this search, that the common world of appearance which we know through our senses is only one aspect of a vaster reality; a reality which in its totality transcends and includes this material world that we percieve. Each particular conception of Godness represents an attempt, necessarily imperfect, to give some kind of cognitive expression to this basic intuition. Thus Gandhi once expressed this in *his* terms according to *his* needs as follows:

> "There is an indefinable, mysterious power that pervades everything. I feel it, though I do not see it. It is this unseen power which makes itself felt and yet defies all proof, because it is so unlike all that I percieve through my senses. It transcends the senses. . . . Sense perceptions can be, and often are, false and deceptive, however real they may appear to us. Where there is realization outside the senses, it is infallible. It is proved not by extraneous evidence but in the transformed conduct and character of those who have felt the real presence of God within."

Though many of the prevalent conceptualizations of this intuition appear to contradict each other, they all have the same function, and thus the same meaning. That function is to give *some* expression, according to the particular needs of the particular individuals involved, to the spiritual depth attributable to all existance; as this depth is encountered through the search for ultimate meaning, ultimate explanation, and ultimate source of value. This intuition simply means that existance contains an extra dimension; a dimension which is unreachable by sensory perception or intellectual analyses, which is nevertheless somehow percieved directly by the core of a person, which is none the less real for its intangibility, and which is in fact primary and fundamental.

Words are symbols which are used in communication to point to meanings. When the meaning pointed to by a particular word-symbol is concrete and sense-defined— e.g. "tree", "green", etc.— there is no problem; but when that meaning is general or abstract or essentially non-material, then the symbols or organizations of symbols which are used are often necessarily ambiguous, vague, and analogous in nature. In these cases there can be many truths for one reality, as many organizations of symbols can point to one intuitively-grasped meaning. This is especially so in matters of religion. For this reason the particular organization of symbols with which we surround the meaning of Godness is not as important as the fact itself of the affirmation of the non material depth attributable to existance. The semantic problem in this area is so great, that I personally usually prefer not to attempt any sort of communication of these matters at all. I would under ordinary circumstances be completely satisfied with the statement at the top of the page as a full definition of religion.

I do not posit the assertions of theism, and yet I feel them to be a thousand times nearer the truth than common atheism.

I reject atheism, in the common sense of the word; as atheism is more than the rejection of the conceptual inadequacies of theisms. It is also the denial of the validity of the very quest—for ultimate meanings, ultimate values

—out of which the idea of Godness springs. It is a denial of the validity of looking for meaning "beyond" the daily-living level of human emphasis. Atheism denies more than conceptual inadequacies—it denies depth of outlook.

The expression "God is Love", if considered *entirely* metaphorically, has at least one advantage for me over other common expressions of spiritual meaning. This advantage is that it tends to point to a connection which I feel to exist between an awareness of the spiritual aspect of existence and values. For values are indeed more than [fol. 170]a freely-chosen moral code, apropos of nothing. They are indeed more than a set of "merely personal feelings". They certainly are these, but they are also more. They are harmony. They are in expression of the need to bring our lives into the closest harmony possible with the essense of the spiritual aspect of existance. They are an attempt by the Part to live in harmony with the Whole.

To act contrary to my values would be for me equivalent to cutting myself lose not only from my fellow-men but also from the entire spiritual universe.

Thus the expression "God is Love", for all its limitations, does succeed in pointing to an objective source of morality.

[fol. 171] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT NO. 45

re: appeal for 1-O classification of Arno Jakobson, 50 17 35 417

Dear sirs;

In the resume that I was sent of the findings of the Justice Department, the charges made to justify the unfavorable recommendation seem to be of two kinds: (1) that my convictions, upon which my claim is based, do not constitute religion, but consist rather of sociological, philosophical, or merely personal moral considerations; and (2) that my Selective Service history contains elements that led my hearing officer, Mr. Halpin, to conclude that I am not sincere in my request.

I don't know what I can write in this letter to convince you that Mr. Halpin's charges are unjust; but I must maintain (1) that I *am* sincere in my conscientious objection, and (2) that I continue to believe that my convictions have origins so deep and all-embracing in my being that they simply cannot be considered merely sociological, philosophical, or cerebrally moral. In my opinion they constitute an essentially religious position.

You already have on file many statements from me, both oral and written, concerning my convictions. I will limit myself in this letter to a brief statement as to why I feel them to be religious.

In my opinion, what makes this position a religious one is its all-embracing and transcendant character in my being. I do not hold these convictions because I have intellectually concluded that they are objectively a good position to take; I hold them because I find that I *must* live in harmony with my inner light. They do not represent a superficial outlook that I have cerebrally chosen; they represent a position that is grounded in the deepest layers of my consciousness. The commitments of this position are transcendant in that they represent to me an absolute moral imperative, and constitute what I feel

[fol. 172] to be my deepest obligations in life. I feel that I, like everyone else, have many obligations in many different directions: obligations to friends, to law, to society, to humanity. But I also feel that when these obligations from without conflict in their demands with my inner commitments, I have no choice but to choose in accordance with my deeper obligations and to take whatever consequences ensue.

They are also transcendant in another sense. To me, to live in harmony with the inner light is to experience reality on its deepest levels. For reality in its totality is greater than the world revealed to us by the senses, unaided by inner effort. Such an inner effort makes for an awareness of the world in its spiritual as well as physical dimentions. It is in this sense (and this sense alone) of a "deeper" or "ultimate" Reality that I can be said to believe in a Supreme Being, in which my values are grounded.

I claim these convictions to be essentially religious in nature because they stem from values which are: (1) deeply ingrained in my whole counsciousness; (2) all-embracing in nature; and (3) transcendant. They cannot be called mere sociology, philosophy, morality; or mere anything.

I never pretended to hold a complete "system" concerning these areas of inquiry (sociology, etc.). I have of course attempted to give a great deal of thought in the past two years to some of the questions in these areas which are immediately connected with a CO position, but I cannot even now claim that the results are perfect. I never claimed to have a perfect external basis for a CO position; I have always considered that its origin was internal, and religious. I can understand in part how a Selective Service official, perhaps feeling himself absolutely obligated to place a strict fundamentalist interpretation on the "religion clauses" with their monotheistic phraseologies, might be loath in his official capacity to [fol. 173] term my convictions "religion"; for they certainly do not represent strict fundamentalist monotheism. But even in such a case it seems to me that he would have to find a better phrase for them than "sociology,

philosophy, or mere personal morality", as they simply are not these.

I realize that these views are unorthodox. They are none the less sincere. I cannot help the unorthodoxy; I was brought up in an atmosphere which respected scepticism, free inquiry, and origional thinking; an atmosphere which I accepted and took to heart. I read widely from Plato to Gandhi, meditated consciously on many problems, and lived and experienced life for twenty-four years: that was my Religious Training. These convictions are the result.

According to the resume, it was felt by Mr. Halpin and the Justice Department that I am not sincere in my claim. Presumably this conclusion was reached on the basis of certain maladroit elements of my Selective Service history: that I did not claim conscientious objection on form 100, filled out when I was eighteen; that I claimed a back disability on that form; that I didn't make my first CO claim till the age of twenty-two, after the physical examination had found me 1-A in spite of the back condition that I claimed; that I then requested a 1-A-O classification; and that I officially changed my request (to 1-O) at the local board hearing a half year later. I would like to breifly summarize what I said to Mr. Halpin about these elements of my SS history.

(1) One reason I gave for my tardiness is that I did not come from a pacifist background, and thus was forced to [fol. 174] face the problem by myself, "from scratch", when it arose. I continue to feel that the religious attitude to life which is at the basis of my position was part of my consciousness for a long time, long before this period. Yet I admittedly made little attempt to consistantly face the problem of compulsary military conscription until the Fact was practically staring me in the face. I cannot explain this except by calling it immaturity. As for the back condition, it was real. I believe that there is a note somewhere in the files from an orthopedic specialist giving the details. As I told Mr. Halpin, instead of facing up to my responsibility to form a well thought out

position with respect to the fact that military service would be a fundamental rejection of my values, I childishy hoped and led myself to believe that my back condition would suffice to make a difficult task unnecessary. I ephasized to Mr. Halpin, however, that bad as this was, my reasons for wanting to avoid induction were basically conscientious, stemming not from amoral desires on my part, but from my deepest values and convictions with respect to the sancity of human life.

(2) At the same time, all this time I was under the impression that the law as it stood did not qualify me for a CO position. My first inquiry as to the qualifications for CO classification was made about half a year prior to the physical, and at the local board office. At that time the clerk in attendance told me that it was a classification given only to individuals with a long and overtly-provable pacifist background: "letters from ministers are required" etc. I believed this. I did not make another inquiry until after the physical, this time at the offices of a pacifist organization. There I discovered that I had been misinformed by the clerk. It was not until I felt satisfied, upon some investigation, that my religious position, [fol. 175] though unorthodox, *did* qualify me under the law for a CO classification, that I first made my claim. Up to that point I thought that the government offered me no alternative to prison; I would not have made a legal claim if I did not feel legally qualified for it.

(3) It is true that my first claim was for a 1-A-O classification, in spite of the absolutist-like views that I expressed in the answers to the questionaire with which I made that request. One reason for this is that I felt guilty and somewhat confused at that time over the relative lack of intellectual support (sociological, philosophical, etc.) that I was able to give to this basically religious position that I knew I had to take. I felt that such a position, thought essentially religious and capable of standing on that basis alone, was one which had so many consequences on other levels of inquiry, that an individual taking it had a moral responsibility to hold a full and well-thought-out position on these levels. At that

time I felt I could fulfill only part of that requirement. This confusion, plus a little fear, made me feel at that point that I might be able to live with myself with a 1-A-O classification. I soon discovered that this was not so; that this represented a *basic* compromise. Therefore I resolved to change my request at the local board hearing which I was continually expecting to come up at any moment.

It seems to me that my Selective Service history is not a terribly unusual one for a CO who was not fortunate enough to have gone through a demonstrable pacifist childhood. I know it is common for such individuals to first face this decision, which for them is a difficult one, late in their Selective Service histories. Some do not make the decision until after they have been inducted. You must know of many such cases yourselves. I dare say that most of them are honest and sincer people. And [fol. 176] cannot similar awkward elements be found in the backgrounds of all of these? I do not wish to minimize the culpable immaturity involved in my particular case, but I must respectfully submit that human nature does not often demonstrate perfection in the respects involved.

I suppose it is up to me now to convince you that I *am* sincere. But what can I say? Sincerity is not a measureable quantity; I cannot give you objective proof for a subjective state.

Frankly I was a little bit shocked by this charge. I did not expect it. I did not expect that at this point my sincerity would suddenly be called into question. I had thought that Selective Service was satisfied on that score. The local board had evidently felt satisfied, and they had the very same facts as to my SS history before them. They had at least given me a 1-A-O classification; why would they have done this if they were not satisfied with my sincerity? The FBI report resume seemed to cast a favorable light in this respect. Why did Mr. Halpin feel that I was insincere? What did he see that led him to call my basic honesty into question in a situation upon which so much of my future may depend? Did he feel that my tardiness constituted an objective measure of dishonesty

and insincerity? Did he see something in my interviewee personality that he believed to be a sign of a dishonest person?

What else can I say? In the long run, all I can do is once again to make the assertion that I *am* sincere in my claim, and hope that you will find it in yourselves to believe me.

That is my reply to the resume I was sent.

Please be assured that I *will* refuse induction, and that [fol. 177] such a refusal *will* be conscientious in nature.

If you agree with me that I would serve my country better by doing Alternate Service than by sitting in prison; and if you find it in yourselves to believe me when I say that my claim is made sincerely; and if you feel that you can validly judge my convictions to be essentially religious ones, though perhaps unorthodoxly so; then won't you please reverse Mr. Halpin's and the Justice Department's recommendation, and sustain my appeal. Thank you.

Respectfully,

Arno Jakobson

[fol. 178] This communication is in reference to an appeal for 1-O classification by Arno Jakobson, # 50 17 35 414. It is a reply to a resume sent me by the appeal board. It is due on April 15.

I lost the address of the appeal board, for which I apologise. I also lost the number of the panel which is concerned with my case. Could it please be forwarded to the proper people in time?

Also please note that my address has changed. It is now:

Arno Jakobson
318 W. 14 St.
New York 14, N.Y.

The local board already has the new address. Thank you.

[fol. 179] GOVERNMENT'S EXHIBIT No. 47

Arno Jakobson
318 W. 14 St.
New York 14, N.Y.
SS # 50 17 35 417

General Lewis B. Hershey
National Director of Selective Service
Washington, D.C.

Dear General Hershey;

I am a conscientious objector, whose claim has been before Selective Service here in New York for the past two years. At the local board hearing, which took place about a year and a half ago, I was classified 1-A-O. As my request at that time was for a 1-O classification, I appealed. I have just received notice that the appeal board for my district has denied my appeal, and has reclassified me in 1-A, by a vote of 4 to 0.

I feel this result to be an unhappy and an unjust one. The local board had at least given me a 1-A-O classification, which made me feel that if nothing else they were at least satisfied with the sincerity and depth-of-origin of my claim. Moreover, I continue to feel that my convictions, which have been growing stronger and stronger these past few years, are essentially religious ones, though perhaps unorthodoxly so. My position with regard to conscientious objection stems from my deepest values and beliefs, ones that will always continue to play a dominant role in my life. Military service for me would represent a fundamental repudiation of these values and beliefs; I cannot thus compromise my deepest convictions and continue to live with integrity.

Though I am aware that I am not automatically entitle to it by regulation, I would like at this time to make to you this request for a further review of my claim on [fol. 180] the Presidential level. I feel very strongly that I could be of no use to myself, to my society, or to mankind in general, by sitting in prison. I am willing and anxious to do any kind of alternate service of a non-military character—hospital work, relief work, or any-

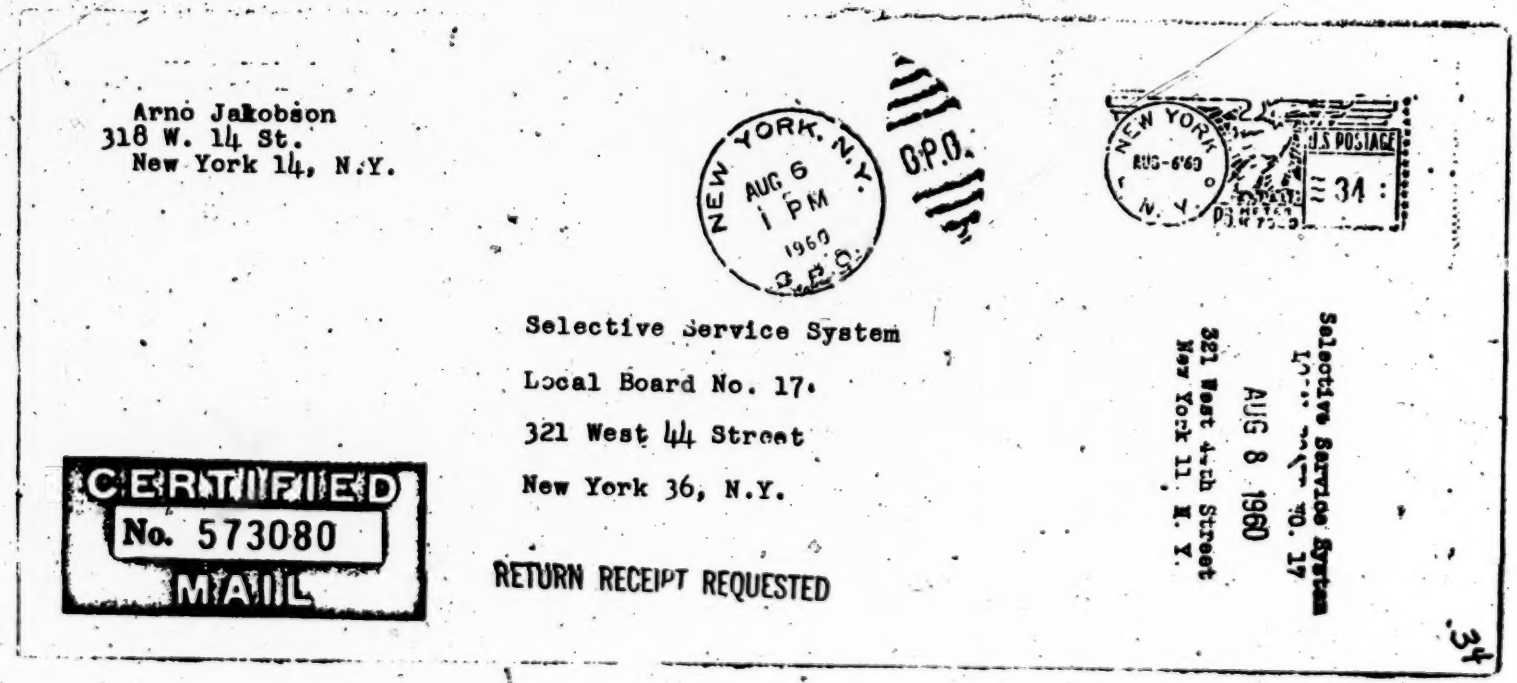
thing else—in any place and for any amount of time. Wouldn't it be possible for Selective Service to consider me to be useless as a prospective military entity? Is there no way that I could serve my society and mankind in a non-military manner that would represent a better alternative than a prison sentence?

If it is at all possible that I be granted a further review of my claim on the presidential level I would deeply appreciate it. Thank you.

Sincerely,

Arno Jakobson

[fol. 181]



Arno Jakobson
318 W. 14 St.
New York 14, N.Y.

NEW YORK, N.Y. AUG 6 1 PM 1960 P.O.S.

O.P.O.

NEW YORK AUG-6'60 N.Y. U.S. POSTAGE 34

Selective Service System
Local Board No. 17.
321 West 44th Street
New York 11 N.Y.

AUG 8 1960

Selective Service System
Local Board No. 17.
321 West 44 Street
New York 36, N.Y.

CERTIFIED
No. 573080
MAIL

RETURN RECEIPT REQUESTED

34

[fol. 182] IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT No. 55

December 5, 1960

Arno Jakobson
318 w 14 st
New York 14, n. y.
#50 17 35 417

Selective Service System
Local Board No 17
321 W. 44 St
New York 36, N.Y.

To the members of the board:

I have received from you an order to report for induction at the Whitehall St center on Dec the 8th. Evidently, then, Selective Service has finally and fully denied me classification as a Conscientious Objector, the claim for which has been continuing for almost three years. I feel this to be a regretable result, as my position is one that *was* sincerely taken, and *is* religious in origen, legal definitions of religion notwithstanding.

The purpose of this letter is to attempt to forewarn you of what I plan to do: I will continue to comply with Selective Service regulations just as far as I possibly can. What this means is that I plan to go down to Whitehall St on the 8th and go through with the entire pre- induction process *short of taking the oath and accepting induction.* Beyond *this point I cannot and will not go. I will refuse to take the oath, and thus will refuse induction.*

I can only say that breaking the law in itself was certainly never my primary aim in taking this position, nor is it now. I am more sorry to be in this position than you must be to see me in it. I have stated several times my willingness and anxiousness to perform *any* kind of Alternate Service of a non-military nature, in *any* place and for *any* amount of time.

But there exists an inner voice, which speaks of love, and nonviolence, and compassion, and human understanding; a voice which when it speaks represents to me the highest law in the universe. Participation in war and in its preparation would represent to me a fundamental repudiation of this silent voice, a fundamental compromise of my deepest values; I cannot accept participation in military service in good conscience. Thus when I refuse on the 8th to accept induction into the armed forces I will be breaking a human law in order to obey what I feel to be a higher and deeper committment in life.

* * * * *

On the possibility that arrest might not take place at the induction center then and there, I would like to state for the record that I am willing to cooperate with any arresting officer that may be assigned to finding and arresting me by reporting for arrest at any time and place, if I am notified in advance. This procedure, if adopted, would save him the possible trouble of making an extensive search for me and not finding me home (I work nights now and am usually home during the day), when I may only be out shopping or taking a walk. My personal purpose in suggesting this is to attempt to avoid having my mother, who is elderly and not in the best of health, needlessly confronted with the arresting process itself, which would I feel be an unnecessary strain on her, though she is of course aware of the general nature of the situation I am in. I am really not very likely, moreover, to be over there visiting during the likely times of arrest. Thus, if it be agreeable to the individuals involved, I will be glad to report for arrest at the convenience of the officer, simply upon being notified in advance. This, however, would of course be up to those involved.

Respectfully,

Arno Jakobson

Anno Jakobson
~~318~~ 318 W 14 St.
New York 14, N.Y.

Selective Servic
LOCAL BOARD
DEC 6 1960
321 West 44th Stree
New York 17 N. Y

CERTIFIED
No. 129329
MAIL

Selective Service System
Local Board No. 17
321 W 44 St.
New York 36, N.Y.

RETURN RECEIPT REQUESTED

[fol. 184] SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1963

UNITED STATES, PETITIONER

v.

ARNO SASCHA JAKOBSON

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—March 6, 1964

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 24, 1964.

/s/ William J. Brennan, Jr.
WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Court of the United States.

Dated this 6th
day of March, 1964.

[fol. 185] SUPREME COURT OF THE UNITED STATES

No. 937, October Term, 1963

UNITED STATES, PETITIONER

vs.

ARNO SASCHA JAKOBSON

ORDER ALLOWING CERTIORARI.—May 4, 1964.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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JAN 24 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 29

FOREST BRITT PETER, *Petitioner*

vs.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	3
A. Proceedings before petitioner's Local Draft Board and the Appeal Board	3
B. Proceedings before the District Court	8
C. Proceedings before the Court below	10
Reasons for granting the writ	10
Conclusion	17
Appendix A	
Appendix B	

CITATIONS

Cases	Pages
Abington School District v. Schempp, 374 U.S. 283	14
Berman v. United States, 156 F.2d 377	10
Engel v. Vitale, 370 U.S. 421	14
Everson v. Board of Education, 330 U.S. 1	14
Sherbert v. Verner, 83 Sup. Ct. 1790	14, 15
Torcaso v. Watkins, 367 U.S. 488	12, 14
United States v. Jakobson, ... F.2d	11, 12, 13
United States v. Kauten, 133 F.2d 703	12
United States v. Rumley, 345 U.S. 42	13
United States v. Seeger, No. 28346 (C.A. 2)	14

Statutes

Universal Military Training and Service Act (62 Stat. 604 *et seq.* (1948), 50 U.S.C. App. 451 *et seq.* (1958)):	
Section 6(j)	2, 4, 10, 11, 12, 13, 14, 15
Section 12(a)	2, 8
28 U.S.C. 1254(1)	2

In the Supreme Court of the United States

OCTOBER TERM, 1963

No.

FOREST BRITT PETER, *Petitioner*

vs.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Forest Britt Peter petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Ninth Circuit entered in this case on October 30, 1963.

OPINIONS BELOW

The opinion of the court below (Appendix A, *infra*) is reported at 324 F.2d 173. The United States District Court for the Northern District of California, Southern Division, in entering its judgment of conviction from which appeal was taken to the court below, did not issue an opinion.

JURISDICTION

The decision of the court below was entered on October 30, 1963. A petition for rehearing was denied on December 10, 1963. By order of this Court, dated January 7, 1964 and signed by Mr. Justice Douglas, the time to file this petition was extended to January 24, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the exemption from military service for persons conscientiously opposed to participation in war, under Section 6(j) of the Universal Military Training and Service Act, requires a belief in Deity.

2. Whether, if the answer to the first question presented is in the affirmative, Section 6(j) is unconstitutional under the First and Fifth Amendments to the United States Constitution.

3. Whether the failure of petitioner, in the circumstances of this case, to report for a pre-induction physical examination is sufficient to sustain his conviction under Section 12(a) of the Universal Military Training and Service Act, irrespective of his qualification for exemption from military service under Section 6(j) of that Act.

STATUTES INVOLVED

The pertinent provisions of the United States Constitution and the Universal Military Training and Service Act (62 Stat. 604 *et seq.* (1948), 50 U.S.C. App. 451 *et seq.* (1958)), are set forth in Appendix B, *infra*.

STATEMENT

A. Proceedings before petitioner's Local Draft Board and the Appeal Board

Petitioner registered with his Local Draft Board in Hayward, California, on July 10, 1956 (Gov't. Exh. 1, p. 2).[1] Thereafter, on March 4, 1958, petitioner requested his Local Board to furnish him a form to apply for classification as a conscientious objector, which he completed and returned to the Board on March 8, 1958 (Gov. Exh. 1, p. 17-22). Petitioner responded to the question on the form which inquired as to his belief in a Supreme Being by stating, "It depends on the definition," and referring to an attached page, where he wrote (Gov't. Exh. 1, p. 20):

> Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.
>
> I consider this belief to be superior to my obligation to the state.
>
> Insofar as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands . . . [It] is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

---

1. "Gov't Exh." refers to Government Exhibits introduced at the trial in the United States District Court. The record on appeal to the court below was not printed, and consists of the original record before the trial court, including exhibits introduced at the trial, and the reporter's transcript of testimony at the trial.

Government Exhibit #1 consists of petitioner's selective service file at the time it was forwarded to the United States Attorney's office for prosecution. Government Exhibit #2 consists of supplemental documents entered in petitioner's selective service file subsequent to referral of the case for prosecution, but prior to the filing of the indictment.

The Local Draft Board rejected petitioner's application, and classified him as 1-A. Thereafter, petitioner requested a hearing before the Local Board "through which I may state my beliefs and present new evidence and information", which request was granted (Gov't. Exh. 1, pp. 27, 28). In connection with the hearing, petitioner submitted the following written statement respecting his belief as to God (Gov't. Exh. 1, p. 31):

> "I have this God inside of me. To be truthful, I don't know if it's a long or short God or even a Superior God (much less a Supreme Being) and I have no idea what its sex is. I'm even worried about calling it God. After all a great deal of death has been done in the name of God.
>
> This God I have inside of me goes off every once in a while and opens me to the motions, to beauty and sadness in the universe. That is, now and again I feel the compulsion to meet the world around me. I'm filled with wonder, I'm possessed as it were, I feel so good I think I'm crazy. So my God isn't beyond me, it's within me and opens me to Godliness in the world."

The record contains only a brief summary of the proceedings at the hearing, prepared by the clerk of the Local Draft Board, stating that petitioner appeared with a supporting witness "to help him in explaining his case" (Gov't Exh. 1, p. 32).

Following the hearing, the Local Board reaffirmed its determination that petitioner should be classified as 1-A, but on August 13, 1959, forwarded his file to the Selective Service Appeal Board upon petitioner's expression of dissatisfaction with the ruling (Gov't. Exh. 1, pp. 33-35). In accordance with Section 6(j) of the Act, an investigation was made by the Department of Justice in connection with the appeal, and a hearing was conducted on February 29, 1960, before a hearing officer. In the course of the investiga-

tion, statements on petitioner's behalf were submitted by acquaintances, and petitioner also submitted a further statement explaining the nature and sources of his beliefs respecting war (Gov't. Exh. 1, pp. 50-60). The Department of Justice reported to the Appeal Board that the hearing officer had been told by petitioner that "he had no orthodox religious background", and had stated that he did not pray (Gov't. Exh. 1, pp. 40-41). The hearing officer, insofar as the report shows, did not question the sincerity of petitioner's beliefs, but concluded that petitioner "evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act" (Gov't. Exh. 1, p. 42). The Department of Justice recommended that petitioner's "claim be not sustained by [the Appeal] Board" (*ibid.*).

On July 29, 1960, the Appeal Board furnished petitioner with a copy of the recommendation of the Department of Justice, and notified petitioner that he would be afforded opportunity to make a written reply thereto (Gov't Exh. 1, p. 61). In response petitioner submitted a lengthy letter stating, *inter alia* (Gov't, Exh. 1, pp. 69-73):

> I have never directly answered 'yes' or 'no' to your question 'Do you believe in a Supreme Being' because I do not know what you mean by the phrase . . . However, I'm moved by many of the elements in the world-in creation.
>
> You might say I believe in them. I believe in these elements because they are there . . . We say, that a tree is beautiful. But why? Because the tree moves us. The branches, the leaves, the very form of the tree, the forces it exemplifies. I do not choose to name this tree God as if that would explain its reason or essence. This is a very distinctive tree and deserves a new name and a reverence that is open to the endless number of things the tree tells us—of form, life and death, of ourselves; our own existence.

> I don't think this is lack of belief. I'm upheld by creation, finding ease as well as pain there ... I believe in elements of this creation like star or animal motion. And I'd work toward an understanding with them called living relationship or form of love.
>
> This is the conscious effort of my life and I have already suffered some regarding it ...

On November 18, 1960, the Appeal Board determined that petitioner's classification of 1-A should remain in effect. Thereafter, petitioner was ordered to report for a pre-induction physical examination on August 30, 1961. Petitioner wrote the Local Board that he would not appear for the examination because of his beliefs, and the examination was not given at the appointed time (Gov't Exh. 1, pp. 82, 84).

On November 22, petitioner was ordered to report for induction into military service (Gov't. Exh. 1, p. 87). Petitioner presented himself at the induction station as directed, but refused to be processed for induction (Gov't. Exh. 1, pp. 91-93). Petitioner's Record of Induction form shows, in an attached Report of Medical Examination, that some entries were made respecting medical data of petitioner, and that the original date for examination—August 30, 1961—was crossed out and the date of November 22, 1961, substituted in its place (Gov't Exh. 1, p. 94). In addition, there is stamped over the form's notation "PIP", presumably referring to pre-inductioin physical, the word "INDUCTEE" (*ibid.*). Apart from the foregoing, the record does not show to what extent, if any, a physical examination was given to petitioner at the time scheduled for his induction.

In January, 1962, petitioner's file was referred to the office of the United States Attorney in San Francisco, and in June of the same year petitioner wrote identical letters

to his Local Draft Board and to the California State Headquarters for Selective Service requesting permission to be given a physical examination (Gov't. Exh. 2, pp. 107, 112). The letters explained that the request was made on advice of counsel, to the end that petitioner "might better present my objection to war and opposition to the military institution at future hearings of my case" (*ibid.*). A similar request was made in a letter to the Director of Selective Service, General Hershey, dated July 6, 1962 (Def. Exh. A). To this letter was attached an additional letter from petitioner to General Hershey dealing with petitioner's beliefs respecting his objections to military service, which in many respects is repetitious of earlier statements. In part, the statement reads as follows (*ibid.*):

> I have never answered "yes" or "no" to the question "Do you believe in Supreme Being?", for several reasons. For one, I was not sure of the Government's definition of a Supreme Being and, as far as I know, the government has never defined the words "Supreme Being" in print or in any law . . . The nature of my belief is more complex and I must have more room to expand my thoughts and to express, or translate, my beliefs through the medium of language. I find this task additionally difficult because I place the stress of my belief on the products, the elements in creation, rather than on a reverence toward the possible Creator of these elements and mysteries of the universe.
>
> This reverence for the elements in the universe before that of the possible creator might be unorthodox, but it is not foreign to religious thought. Witness the writings of Buddha (those attributed to him and early followers), and of Lao Tzu as well as Christian Mystics like Boehme and Blake.
>
> . . . . . .
>
> I feel that one is not amis in terming my conviction "religious" in that it is based on vision and a dedica-

tion to that vision, and I feel that this vision and my commitment to it fits into a definite tradition if not into any specific historical group.

* * * * * * *

I'm motivated by what Albert Schweitzer calls a "reverence for life", I think of myself as a receptive organ through which the tragedy and beauty of the world are perceived.

* * * * * * *

The presence of other living beings in the universe sounds a call, presents a vision, a fact, a mysterious reality that I cannot deny and to which I feel the impulse to relate.

I view physical violence on the other hand as a denial of life.

* * * * * * *

My conviction is not based on intellectual conclusions alone, but is primarily based on the promptings of my heart and the sense of relationship with all living elements in nature."

Petitioner's requests for a physical examination were denied both by the Local Board and the California State Headquarters (Gov't. Exh. 2, pp. 114, 111).

B. Proceedings before the District Court

On September 26, 1962, petitioner was indicted under Section 12(a) of the Act on the ground that he "did, on the 22nd day of November, 1961 . . . knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States . . ." Petitioner was thereafter tried without jury, the evidence consisting principally of his selective service file. Petitioner testified briefly at his trial with respect to his claim for conscientious objector's status as follows (Tr. Dist. Ct. pp. 25-26):

> I think the basic reason—my religious basis for my conscientious objection to war is a reference to all living things. I feel a relationship to all other living beings, and I feel called upon to respect them, and I could not kill them or engage in an institution such as the Armed Forces, which predicates this belief, which would lead one possibly in the service to commit such an act to kill.

Petitioner repeated his earlier statements that he was unable to make an unqualified answer to the question of whether he believed in a Supreme Being, and explained (*id.*, p. 28):

> I have also said that I couldn't possibly give the answer in just a yes or no question, because I think I have some right to define God or my religious beliefs in my own words.
>
> * * * * * * *
>
> I think that my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of the essence being alive, and my respecting and loving this livingness in other objects and human beings.
>
> * * * * * * *
>
> I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.

Finally, in answer to a question on cross-examination as to his understanding of the term "religion", petitioner stated (*ibid.*):

> By 'religion'—I think in my own terms, religion is based on two things. Number one would be vision, a vision of reality in the world or the universe, and

second is conviction regarding that vision, the way a person reacts to his vision of reality.

At the close of the trial, the district court forthwith found petitioner guilty as charged in the indictment (*ibid.*, p. 35).

C. Proceedings before the Court below

The court below affirmed the conviction. As explained in its opinion, the court considered that the Local Board and the Appeal Board could reasonably have found that petitioner did not "manifest clearly and unequivocally a belief in a Supreme Being to Whom he owed obedience" (App. A., *infra*, p. 9). Quoting from its earlier decision in *Berman v. United States*, 156 F.2d 377, 380, 381, the opinion below states that the criterion for exemption under the Act is "'an individual's belief in his responsibility to an authority higher and beyond any worldly one'", and added that "'philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute'" (App. A.; *infra*, pp. 8-9). Concluding that there was basis in the record for a finding that petitioner did not subscribe to a belief in a deity, the court below reasoned that petitioner's convictions were therefore "quite consistent with 'a merely personal moral code,' which is expressly excluded by Congress as a basis for classification as a conscientious objector" (App. A., p. 9).

REASONS FOR GRANTING THE WRIT

1. The court below interprets the provision of Section 6(j) of the Act which requires "belief in relation to a Supreme Being" for classification as a conscientious objector to prescribe a belief in Deity. Further, in concluding that Congress has written "the concept of Deity" into the statutory exemption, the court below equates the terms

"God" and "Supreme Being", and holds that beliefs which do not accept God do not "comport . . . with the standard or accepted understanding of the meaning of 'Religion' in American society", and constitute rather "'a merely personal moral code'" (*infra*, pp. 8, 9). It was on this ground that the conviction of petitioner was affirmed, for the court ruled—and we do not challenge the correctness of the ruling—that the record permits the inference that petitioner does not believe in anthropomorphic God.[2]

The meaning thus attributed by the court below to Section 6(j) of the Act is in conflict with the interpretation given the same language by the Court of Appeals for the Second Circuit in *United States vs. Jakobson*, ... F.2d ....., decided November 22, 1963, 32 L.W. 2257. The personal beliefs of the claimant in the *Jakobson* case were similar to those of petitioner here, at least to the extent that they were grounded in a personally conceived religion which did not appear to accept the existence of anthropomorphic God. The Second Circuit reasoned that a refusal to invoke the exemption of Section 6(j) on this ground would raise a serious constitutional doubt, and concluded that the "Supreme Being" test was satisfied where, as with petitioner

2. There is no suggestion in petitioner's selective service file that his convictions against service in the armed forces were other than sincere. The Local Board did not explain the grounds of its denial of petitioner's request for exemption, but the Department of Justice reported to the Appeal Board that its hearing officer had concluded that petitioner was not exempt because he had not "evidenced . . . religious training and belief in a Supreme Being as defined in the Military Training and Service Act" (Gov't. Exh. 1, p. 42). Nothing in the report challenges petitioner's sincerity, and the selective service file is replete with statements and evidence in support of petitioner's sincerity. The decision below assumes that petitioner was "absolutely sincere" (App. A., *infra*, p. 6). The observation of the court below (App. A., *infra*, p. 9) that petitioner, at his trial, had "reluctantly and grudgingly stated that his beliefs might be construed as a belief in a Supreme Being" refers not to the sincerity with which petitioner held his views, but rather to his reluctance to characterize them as a belief in a Supreme Being.

in the present case, the belief in question is essentially religious in character, whether or not grounded upon the existence of Deity. As the Second Circuit observed, "We cannot believe that Congress . . . meant to . . . require lay draft boards and personnel of the Department of Justice to pass on nice theological distinctions . . ." .....F.2d .....

The conflict between the Second and Ninth Circuits presents a question of substantial importance in the administration of the Act. There is a marked difference in the scope of Section 6(j)'s application between an interpretation which restricts the exemption to individuals who believe in God and an interpretation which includes as well individuals who do not acknowledge the existence of God, but who hold sincere religious convictions against service in the armed forces. Resolution of the conflict is essential to assure uniform and proper application of Congressional policy respecting the treatment of the latter class of persons. This class of persons very frequently serve jail sentences in deference to their beliefs, a penalty which is not authorized as to petitioner or others of like persuasion if the *Jakobson* decision is correct.

2. The interpretation given to Section 6(j) by the court below is premised on its conclusion reached in earlier decisions that religion necessarily connotes a faith in God. The court's view is too restricted. As observed by this Court, "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others". *Torcaso vs. Watkins*, 367 U.S. 488, 495, n. 11. See also the statement of Judge Augustus Hand in *United States vs. Kauten*, 133 F.2d 703, 708 (C.A. 2). Accordingly, if the exemption in Section 6(j) of the Act properly encompasses conscientious opposition to military

service grounded generally on sincerely held religious beliefs, the court below erred in distinguishing between classes of religious beliefs to which the exemption is applicable.

As pointed out by the Second Circuit in *United States vs. Jakobson, supra*, and as shown below, an interpretation of Section 6(j) which is narrower than the scope of the First Amendment's guarantee of the free exercise of religion raises a serious doubt as to its constitutionality. Accordingly, every effort should be made to construe the statutory language "in the candid service of avoiding a serious constitutional doubt". *United States vs. Rumley*, 345 U.S. 42, 47. This may be accomplished by reading the statutory prescription of "an individual's belief in a relation to a Supreme Being" to encompass all religious beliefs that are protected by the First Amendment. Such a reading does not unduly strain the Congressional language. The traditional basis for extending statutory grace to conscientious objectors is a recognition of sincerely held religious convictions, without specification of the substantive content of such convictions, or their authorization by any particular sect. The term "Supreme Being", while it may well have reference to God in a conventional Christian sense, is not so precise as to preclude religious tenets which are grounded in a personal response of conscience to a creative force in the universe. Views of this nature, to which petitioner has subscribed, may properly be described as a "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation". Section 6(j) of the Act.

3. Section 6(j) of the Act, as read by the court below, is unconstitutional in that it imposes an unwarranted burden on the free exercise of religion, and makes an unreasonable classification of religious views. By equating the Supreme

Being test with a belief in Deity, the court below interprets Section 6(j) to extend the allowances of that provision to individuals whose religious beliefs accept the existence of God, but not to those whose religious beliefs deny the existence of God. This is a distinction which cannot stand under the First or Fifth Amendments. The constitutional guarantee of the free exercise of religion encompasses faiths which do not teach the existence of God as well as to those which are premised on the existence of God. *Torcaso v. Watkins*, 367 U.S. 488, 495. To discriminate in the grant of legislative grace in favor of one kind of religion as against another is to violate the principle of maintaining "'a wall of separation between church and State,'" and is constitutionally forbidden. *Everson v. Board of Education*, 330 U.S. 1, quoting Thomas Jefferson. See also, *Sherbert v. Verner*, 83 Sup. Ct. 1790; *Engel v. Vitale*, 370 U.S. 421; *Abington School District v. Schempp*, 374 U.S. 283.[3]

There is no countervailing governmental interest that justifies the restriction upon the scope of the religious exemption which the court below has read into Section 6(j). It cannot be maintained that individuals whose religious views reject the existence of God are necessarily less sincere in opposing military service on religious grounds than those who believe in God. The single effect of extending the religious exemption only to those who believe in God is to

3. On the day that this petition was sent to the printer, the New York Times, Western Edition (January 21, 1964, p. 1:7) reported that the Court of Appeals for the Second Circuit has declared Section 6(j) of the Act unconstitutional insofar as it requires, as a condition for exemption, a belief in a Supreme Being. *United States v. Seeger*, No. 28346 (C.A. 2). We have not had opportunity to read the decision, but it would appear that the Second Circuit's ruling squarely supports the position of petitioner, and is in conflict with the decision below.

place governmental support in a matter of substantial importance behind some religious teachings as against others. This it cannot constitutionally do. *Sherbert v. Verner*, 83 Sup. Ct. 1790.

Although the constitutional issue was not discussed in the opinion below, and was apparently not considered by the court, it is properly presented on the record of this case. Thus, it was petitioner's contention in the trial court and in the court below that Section 6(j), properly construed, extended the religious exemption from military service to beliefs of the character held by petitioner. By rejecting this contention, and reading the exemption language of Section 6(j) to presuppose a belief in God, the decision below engendered a serious constitutional issue. Following issuance of the decision, petitioner filed a petition for rehearing en banc, pointing out that the court's determination raised serious constitutional doubts respecting Section 6(j) of the Act, and requested opportunity to brief and argue the question. The petition for rehearing was denied without opinion, thereby making the constitutional question appropriate for review by this Court. The constitutional question, moreover, is inherent in a full consideration of the statutory interpretation question, which was fully argued at all stages of this proceeding. Indeed, the constitutional considerations constitute the most compelling reason for interpreting Section 6(j) in the manner urged by petitioner.

4. The third question presented by this petition, relating to petitioner's failure to report for a pre-induction physical examination in accordance with the notice given him, was pretermitted by the court below as unnecessary to a determination of the case. The question is not of sufficient public importance independently to warrant review by this

Court, but is preserved in order to permit the Court to deal with all aspects of the case and avoid further proceedings before the court below. This course is justified on the ground that the record cannot fairly support a determination that petitioner's conviction is sustainable by reason of his failure to report for a pre-induction physical examination.

Thus, the matter of the physical examination cannot properly be made a part of the case against petitioner, for it is not within the indictment. The critical language of the indictment alleges only that petitioner "knowingly refuse[d] to submit himself to induction and [to] be inducted into the Armed Forces of the United States . . ." The sole evidence in support of this charge is that petitioner appeared in response to the induction notice, but refused to be inducted. It is plain, moreover, that the Selective Service officials did not regard the absence of a physical examination as precluding induction, for petitioner was notified to report for induction following the scheduled date of the examination, and the Report of Medical Examination pertaining to petitioner indicates on its face that he was to be inducted irrespective of the absence of the examination (*supra*, p. 6). In addition, the Delinquent Registrant Report (Gov't Exh. 1, p. 101) which was forwarded to the United States Attorney to indicate the basis for possible criminal proceedings, states only that petitioner "Failed to submit to induction Nov. 22, 1961". The physical examination was scheduled for August 30, 1961. Finally, petitioner's attempts to submit himself to the physical examination following the scheduled induction date were rejected (*supra*, p. 7).

From the foregoing, it is clear that petitioner's failure to report for the physical examination is not an offense with which he has been charged in this case, and that in any

event the Selective Service officials waived the requirement for purposes of inducting petitioner into the armed forces. Accordingly, the conviction should be reversed and the indictment dismissed if either of the first two question presented are answered in petitioner's favor.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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January, 1964.

Appendix A

United States Court of Appeals for the Ninth Circuit

No. 18,546—Oct. 30, 1963

FOREST BRITT PETER, *Appellant.*

vs.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Northern District of California, Southern Division.

Before: MADDEN, Judge of the Court of Claims,* and HAMLIN and BROWNING, Circuit Judges

HAMLIN, Circuit Judge:

This is an appeal from a conviction of violation of section 12(a) of the Universal Military Training and Service Act, 62 Stat. 622 (1948), 50 U.S.C. App. § 462(a) (1958). Appellant, Forest Britt Peter, having waived a jury trial, was found guilty of failure to submit to induction into the armed forces by the United States District Court for the Northern District of California, and was committed to the custody of the Attorney General for six months. Jurisdiction of this court is based on 28 U.S.C. § 1291 (1958).

On July 10, 1956, appellant registered for the Selective Service System with Local Board No. 53 in Hayward, Cali-

*Sitting by designation.

fornia. On May 27, 1957, he completed and returned the standard classification questionnaire. He did not sign section VII of that questionnaire, relating to conscientious objector status, but submitted with the questionnaire a quotation from a poem which expressed opposition to war and a statement of his own concurring with the quotation.[1] On March 10, 1958, the local board received from him a completed SSS Form 150 relating to conscientious objector status. In answer to question 1 in series II, "Do you believe in a Supreme Being?," he answered, "It depends on the definition. See 2 below." Question 2 of the series inquires as to the nature and quality of the belief, question 3 as to its source, and question 5 as to the circumstances, if any, in which force could be used; appellant referred to a separate sheet on which these questions were answered.[2] He stated he was not a member of a religious sect or organization.

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1. . . . . so in plain English:
I am opposed to all war.
I don't believe human beings should kill each other.
I am opposed to all violence . . . for whatever reason.
I believe that wars will only end when men refuse to murder one another—for whatever reason.
I believe these things as a man and as a revolutionist. For I believe wars will only end when the present murderous forms of society are allowed to die—and all men are at last permitted to live together as brothers.

—from An Astonished Eye Looks out of the Air
—by Kenneth Patchen

I concur with the statements of Mr Patchen that are listed above.

FOREST BRITT PETER
May 22, 1957

Portland
Oregon

2. Series II.—Religious Training and Beliefs
2. Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of

On July 10, 1959, the local board by a 2-to-0 vote classified appellant 1-A. On August 3, 1959, appellant appeared at a hearing before the local board where he substantially reiterated the views previously stated. The local board determined by a 2-to-0 vote not to open the case, and a notice of classification was mailed to appellant on August 4. On August 7, appellant wrote a letter to the board which reads as follows:

"Dear Sirs,

"Thank you for your time the other night at the hearing. I'm sorry you were unable to classify me as a Conscientious Objector.

"The decision however, was not a surprise considering my lack of 'proof' and your lack of moral courage.

"I just hope the war you support won't kill us all in the next few years.

"To the future,

"Forest Britt Peter."

Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.

I consider this belief to be superior to my obligation to the state.

In so far as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands . . . (it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

3. I would say that the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic american culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups.

6. The use of violence (physical force) comprises the ends one seeks in action. I consider war to be the greatest example of this. The use of non-violence in the freeing of India and the Montgomery bus strike is an example of the kind of force I do believe in.

FOREST BRITT PETER
3/10/58

The clerk of the local board interpreted this letter as a request for appeal and forwarded the file to the appeal board on September 9. On October 8, the Appeal Board for the Northern District of California "tentatively determined that the registrant should not be classified in Class I-O or in a lower class," and forwarded the file to the Justice Department for investigation and hearing under section 6(j) of the Universal Military Training and Service Act, 62 Stat. 609 (1948), as amended, 50 U.S.C. App. § 456(j) (1958). On July 29, 1960, the Conscientious Objector Section of the Justice Department recommended to the appeal board that appellant's claim not be sustained, and a copy was mailed to appellant together with a letter advising him that he had thirty days within which to reply to the recommendation.[3] Appellant's reply was a long letter alleging inaccuracies and irrelevancies in the hearing officer's report together with a lengthy dissertation on his beliefs, their nature, quality, and source. On November 18, 1960, the appeal board by a 5-to-0 vote continued the classification of I-A.

On July 20, 1961, appellant was ordered to report for a pre-induction physical examination scheduled for August 30. Appellant replied with a letter dated August 15 which reads as follows:

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3. "The Hearing Officer reported that he told the registrant that belief in a Supreme Being was required and that at no time did the registrant suggest that he had a belief in a Supreme Being; that in answering the Hearing Officer's question, 'Are you prayerful?' the registrant had stated, 'No, I don't pray.' "

* * *

"The Hearing Officer concluded that the registrant evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act and the Hearing Officer recommended that the claim of the registrant, based upon grounds of conscientious objection, be not sustained."

"Dear Sirs,

"I will not appear for my Armed Forces Physical Examination August 30th, In accordance with my previously stated views and beliefs as a conscientious objector."

Appellant also forwarded a letter dated August 15, 1961.[4] Appellant was then ordered to report on November 22 for induction as a delinquent. He replied with a letter to the local board dated October 16 as follows:

"I recently received from you a notice of delinquency for my failure to report for an Armed Forces Physical Examination on August 30, 1961. I do not consider myself delinquent. I remain as before, a conscientious objector to war and to all military institutions. I am a proponent of non violent action and reaction with other human beings, and I could not and will not participate in a physical examination whose purpose is to define my fitness for service in the *Armed* Forces.

"Once again,

"Forest Britt Peter."

On advice of counsel, however, appellant reported to the Armed Forces Recruiting Station in Oakland, California, on the appointed day, and there refused to be processed for induction. He was not given a physical examination at that time. Appellant on later dates submitted letters to the local board, the California State Headquarters, and the Director of the Selective Service System, General Hershey, requesting a physical examination, with the avowed purpose of avoiding the effect of the doctrine of exhaustion of administrative remedies. These requests were denied.

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4. The letter was almost an exact copy of the letter set out in note 1, *supra*.

On September 26, 1962, appellant was indicted for refusing to submit to induction and was tried and found guilty by the district court without opinion on November 16, 1962.

The issues in this case are: (1) Whether appellant qualifies as a conscientious objector; and (2) whether appellant was precluded from raising the defense because he failed to exhaust his administrative remedies.

In *Estep v. United States*, 327 U.S. 114, 122-23 (1946), the Supreme Court held that "the decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant." Appellant contends that there was no basis in fact for the classification given him on the grounds that there is no evidence in the record that anyone at any time questioned the sincerity of his beliefs. The government contends that the local board and the Justice Department's hearing officer had the opportunity to observe the demeanor and attitude of the appellant in his appearances before them and that their refusals to classify him as a conscientious objector show some doubt as to his sincerity. There is some merit in the government's contention. However, even assuming that appellant was absolutely sincere, the record demonstrates that there was a basis in fact for the board's determination that he did not meet the statutory requirements for a conscientious objector.[5]

Appellant concedes that exemption from service as a conscientious objector is not a matter of constitutional right but of legislative grace. To qualify for such a classification, a

5. Appellant's contention that this case is "on all fours" with Parr v. United States, 272 F.2d 416 (9th Cir. 1959), is in error. The facts in the *Parr* case are entirely different.

registrant must meet the standards set forth by Congress in section 6(j) of the Universal Military Training and Service Act, 62 Stat. 609 (1948), as amended, 50 U.S.C. App. § 456(j) (1958):

> "Nothing contained in this title . . . shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, *by reason of religious training and belief*, is conscientiously opposed to participation in war in any form. *Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.*" (Emphasis added.)

Appellant contends that he meets the definition. His argument is that his beliefs have a religious foundation. In support of this, he stated at his trial:

> "A. I think my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of them, the essence of being alive, and my respecting and loving this livingness in other objects and human beings."
>
> "Q. Well, now, in relation to the question of a Supreme Being—"
>
> "A. I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use."

In *Berman v. United States*, 156 F.2d 377, 380 (9th Cir.), *cert. denied*, 329 U.S. 795 (1946), this court defined the standard set forth in the predecessor to this act as follows:

"It is our opinion that the expression 'by reason of religious training and belief' is plain language, and was written into the statute for the specific purpose of distinguishing between a conscientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon an individual's belief in *his responsibility to an authority higher and beyond any worldly one.*" (Emphasis added.) The court also quoted from *United States v. Macintosh*, 283 U.S. 605, 633-34 (1931) (Hughes, C.J., dissenting), that "the essence of religion is belief in a *relation to God involving duties superior* to those arising from any human relation." (Emphasis added.) It is true that when the *Berman* case was decided, there was no sentence in the statute defining "religious training and belief." However, the present statute does contain such a definition, and it is by no means repugnant to the *Berman* definition. In fact, it adopts almost verbatim the wording from Mr. Chief Justice Hughes's dissent in *Macintosh* which the *Berman* court quoted with approval, changing only the word "God" to "a Supreme Being." In *George v. United States*, 196 F.2d 445, 451 (9th Cir.), *cert. denied*, 344 U.S. 843 (1952), this court in reaffirming the definition previously used stated that "it is evident that the definition which the Congress introduced into the 1948 Amendment comports with the spirit in which 'Religion' is understood generally, and the manner in which it has been defined by the courts. It is couched in terms of the relationship of the individual to a Supreme Being, and comports with the standard or accepted understanding of the meaning of 'Religion' in American society." Appellant has made no good argument as to why the statutory definition should be overruled, and, indeed, it is far beyond the power of this court to change the definition placed in the act by Congress.

It is significant that nowhere in the record of the proceedings before the administrative bodies did appellant manifest clearly and unequivocally a belief in a Supreme Being to Whom he owed obedience. When asked directly, "Do you believe in a Supreme Being?," he answered, "It depends on the definition." Later he referred to the act of killing as "a violation of moral law." Determination of his meaning and of his demeanor and attitude were functions of the administrative bodies, and it cannot be said that they were unreasonable in their determination. Such statements were quite consistent with "a merely personal moral code," which is expressly excluded by Congress as a basis for classification as a conscientious objector. As was stated in the *Berman* case, 156 F.2d at 381, "There are those who have a philosophy of life, and who live up to it. There is evidence that this is so in regard to appellant. However, no matter how pure and admirable his standard may be, and no matter how devotedly he adheres to it, his philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute." It was not until his trial for violation of the act that appellant reluctantly and grudgingly stated that his beliefs might be construed as a belief in a Supreme Being.

We hold there was ample basis in fact for the determination by the selective service board that appellant's claim for exemption did not come within the language of the statute.[6]

Judgment affirmed.

(Endorsed) Opinion Filed Oct. 30, 1963.

Frank H. Schmid, Clerk.

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6. By reason of our holding against appellant on this issue it is not necessary for us to consider the issue of whether or not he failed to exhaust his administrative remedies.

Appendix B

The relevant provisions of the Universal Military Training and Service Act, 50 U.S.C. App. 451, *et seq.*, are as follows:

Section 6(j), 50 U.S.C., App. 456(j):

> "Nothing contained in this title [sections 451-454 and 455-471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board, shall, if he is inducted into the armed forces under this title [said sections], be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title [section 462 of this Appendix], to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix]. Any person claiming exemp-

tion from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title [said sections], he shall be assigned to noncombatant services as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix]."

* * * * * * *

Section 12(a), 50 U.S.C., App. 462(a):

"(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451-454 and 455-471 of this Appendix], or the rules or regulations made or directions given

thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title [said sections], rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title [said sections], or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title [said sections], or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title [said sections], or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said sections], or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this [said sections] or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any

case arising under this title [said sections] unless such person has been actually inducted for the training and service prescribed under this title [said sections] or unless he is subject to trial by court martial under laws in force prior to the enactment of this title [June 24, 1948]. Precedence shall be given by court to the trial of cases arising under this title, and such cases shall, upon request of the Attorney General, be advanced on the docket for immediate hearing."

The relevant provisions of the Constitution of the United States are as follows:

Amendment I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

* * * * * * *

Amendment V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Reasons for granting the writ	6
Conclusion	9
Appendix A	11
Appendix B	29
Appendix C	43

CITATIONS

Cases:	
Berman v. *United States*, 156 F. 2d 377	7, 8
Clark v. *United States*, 236 F. 2d 13, certiorari denied, 352 U.S. 882	8
Etcheverry v. *United States*, 320 F. 2d 873, certiorari denied, 375 U.S. 930	8
George v. *United States*, 196 F. 2d 445, certiorari denied, 344 U.S. 843	8
Peter v. *United States*, 324 F. 2d 173, petition for certiorari pending, No. 787 this term	8
United States v. *De Lime*, 223 F. 2d 96	8
United States v. *Jakobson*, 325 F. 2d 409	8
United States v. *Kauten*, 133 F. 2d 703	5, 6, 7
United States v. *Macintosh*, 283 U.S. 605	7
United States ex rel. Phillips v. *Downer*, 135 F. 2d 521	7
United States ex rel. Reel v. *Badt*, 141 F. 2d 845	7
Statutes:	
54 Stat. 889	7
50 U.S.C. App. 456(j). Section 6(j) of the Universal Military Training and Service Act, 62 Stat. 612	2
50 U.S.C. 462	3
Miscellaneous:	
S. Rep. No. 1268, 80th Cong., 2d Sess.	8

In the Supreme Court of the United States

OCTOBER TERM, 1963

No.

UNITED STATES OF AMERICA, PETITIONER

v.

DANIEL ANDREW SEEGER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit reversing respondent's conviction for refusal to submit to induction into the armed forces.

OPINIONS BELOW

The opinion of the court of appeals (App. A, pp. 11–28, *infra*), is reported at 326 F. 2d 846. The opinion of the district court (App. B, pp. 29–41, *infra*) is reported at 216 F. Supp. 516.

JURISDICTION

The judgment of the court of appeals was entered on January 20, 1964, (App. C, p. 43, *infra*). On February 19, 1964, Mr. Justice Harlan extended the

time to petition for certiorari to March 20, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in granting an exemption from military service to those "who, by reason of religious training and belief, [are] conscientiously opposed to participation in war in any form," Congress could constitutionally limit such exemption to individuals who have a "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation * * *."

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides in pertinent part:

> Nothing contained in this title [sections 451, 453, 454, 455, 456 and 458–471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *

STATEMENT

Respondent was convicted after a trial by the court in the Southern District of New York, of having violated 50 U.S.C. App. 462 by refusing to submit for induction into the armed forces. He was sentenced to imprisonment for a year and a day. On appeal, the conviction was reversed.

Except for one stipulation of fact, the evidence consisted of respondent's Selective Service file. It shows that respondent first registered with his local board on reaching his eighteenth birthday in September 1953, and that he then requested deferment as a student but made no claim for exemption as a conscientious objector (R. 9a; GX 3, p. 7).[1] He was initially classified 1–A but was thereafter given a student deferment which was twice renewed. Respondent first claimed conscientious objector status on July 15, 1957, in a letter to his local board, and his classification was then changed to 1–A (GX 3, p. 8).

In his letter respondent wrote that his claim arose "from what I believe to be considerations of validity from the standpoint of the welfare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain." It was his conclusion "that war, from the practical standpoint, is futile and self-defeating, and that from the more important moral standpoint, it is unethical" (GX 11).

[1] "R." refers to respondent's appendix in the court of appeals; "GX" indicates Government exhibit.

Respondent was then sent a special Selective Service questionnaire for conscientious objectors. In his answers to the presently material questions respondent (1) refused to answer categorically whether or not he believed in a Supreme Being but expressed respect for "belief in and devotion to goodness and virtue for their own sakes"; (2) expressed his opposition to military mobilization and its effect on human values; (3) concluded that "I cannot participate in actions which betray the cause of freedom and humanity. Experience with the past indicates that our armament policy will lead to war, and war, with its indiscriminate crushing of human personality, cannot preserve moral values. We cannot preserve freedom by denying freedom; the end does not justify the means"; (4) stated that his views were derived from a variety of works he had read, including books by Mohandas Gandhi and Bertrand Russell and studies of the works of Leo Tolstoy; and (5) said that he relied "on no particular person for religious guidance" but resolved "spiritual and ethical problems by reading relevant essays or books, by discussion and debate with colleagues, and ultimately, by following the dictates of my conscience" (GX 13). His views were elaborated somewhat further in a second questionnaire which was answered in November 1958 (GX 24). Respondent stated therein that he was opposed to the use of force, but only under certain circumstances. He said that he "would *restrain* the attacker and the thief * * * [but] would not try to stop them * * * if doing so meant killing or injuring other innocent people." (Emphasis in the original.)

In his appearance before a hearing officer of the Department of Justice, respondent indicated that he was not affiliated with any of the sects to which conscientious objectors characteristically belong. He expressed "strong sympathetic support" for the Quaker movement and sympathy for some of the views of the Jehovah's Witnesses, but stated that the matter is a personal problem requiring each individual to "make up his own mind as to how he feels toward his fellow man" (R. 10a).

Respondent's appeals were rejected, and his 1–A classification was sustained by the local appeal board and by the National Selective Service Appeal Board (Resume of Exhibits, pp. 5, 7). Respondent was thereupon ordered to report for induction, and he refused to comply.

It was stipulated in the district court that respondent's witnesses, if called, would have testified that his views were "religious" within the definition of that word given in *United States* v. *Kauten,* 133 F. 2d 703, 708, and subsequent decisions in the Second Circuit following *Kauten.*[2] The district court concluded that the *Kauten* definition had been rejected by Congress in 1948—when it enacted the present statutory language—in favor of a limited exemption granted only to "those who based their objections on belief in

[2] In *Kauten* the statutory exemption was considered to apply only to "a conscientious objection to participation in any war under any circumstances * * * a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse." 133 F. 2d at 708.

a deity commanding abstinence from war on pain of supernatural sanction" (p. 37, *infra*). This exemption was held to violate neither the First Amendment nor Article VI, Clause 3 of the Constitution.

The court of appeals reversed, holding that the "Supreme Being requirement" of the statute "create[d] an impermissible classification" (p. 27, *infra*) insofar as it distinguished "between internally derived and externally compelled beliefs" (p. 25, *infra*). The court held, in substance, that any exemption of the sort provided by the statute would constitutionally have to "embrace all those faiths which can validly claim to be called 'religions'" (p. 24, *infra*), and suggested that the constitutionally required definition of "religion" is the one given in *United States* v. *Kauten, supra,* (pp. 19, 25, *infra*).

REASONS FOR GRANTING THE WRIT

The decision of the court of appeals expressly holds unconstitutional a classification deliberately adopted by Congress in 1948 and implicitly approved in subsequent extensions and modifications of the Universal Military Training and Service Act. That holding conflicts with decisions of the Ninth and Third Circuits in which the same classification was sustained against similar constitutional challenges. The decision also raises important questions concerning the permissible scope of Congress' authority to require compulsory military service. It is, therefore, an appropriate case for review and authoritative determination by this Court.

1. Before 1948 the conscientious objector provision of the Selective Service Act provided for exemption of anyone "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 54 Stat. 889. While the Court of Appeals for the Second Circuit intepreted this language broadly in *Kauten* and subsequent cases,[3] the Ninth Circuit, in *Berman* v. *United States*, 156 F. 2d 377, 380, certiorari denied, 329 U.S. 795, rejected the *Kauten* formula and held that the phrase "by reason of religious training and belief" had been "written into the statute for the specific purpose of distinguishing between a conscientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon an individual's belief in his responsibility to an authority higher and beyond any worldly one." Consequently, the Ninth Circuit in *Berman* adopted, for purposes of interpreting the conscientious objector provision, the definition of religion stated by Mr. Chief Justice Hughes in dissent (with Justices Holmes, Brandeis and Stone concurring) in *United States* v. *Macintosh*, 283 U.S. 605, 633–634: "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation." See 156 F. 2d at 381. It was the *Berman* definition that Congress selected in 1948 and incorporated into the statute, thereby rejecting the broader definition announced in *Kauten*. Indeed, the legis-

[3] *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521 (C.A. 2); *United States ex rel. Reel* v. *Badt*, 141 F. 2d 845 (C.A. 2). The *Kauten* definition appears in note 2, *supra*.

lative history discloses in no uncertain terms that this was a knowing choice by Congress. For, after noting that the present language "reenacts substantially the same provisions" as were found in the earlier statute, the Senate Report cites the *Berman* case as support for the statement that "[e]xemption extends to anyone who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service." S. Rep. No. 1268, 80th Cong., 2d Sess. (1948), p. 14.

2. The constitutionality of the statutory definition has been explicitly upheld in the Ninth Circuit, *Etcheverry* v. *United States,* 320 F. 2d 873, 874, certiorari denied, 375 U.S. 930; *Clark* v. *United States,* 236 F. 2d 13, 24, certiorari denied, 352 U.S. 882; *George* v. *United States,* 196 F. 2d 445, 450–452, certiorari denied, 344 U.S. 843, and assumed in that circuit in *United States* v. *Peter,* 324 F. 2d 173, petition for certiorari pending, No. 787 this Term. It has also been sustained in the Third Circuit, *United States* v. *De Lime,* 223 F. 2d 96, 100. This conflict must be resolved by this Court so that the Act may be fairly and uniformly administered throughout the country.

3. Like *United States* v. *Jakobson,* 325 F. 2d 409, another decision of the Second Circuit from which we are also petitioning for a writ of certiorari, and *Peter* v. *United States,* No. 787, this Term, pending on the registrant's petition, this raises serious questions concerning the permissible scope of Congress' power to deal with persons otherwise eligible for induction under

the Act who assert conscientious objections to service in the military forces in combatant or noncombatant capacities. By limiting this exemption to those who claim it because of "religious training and belief" and by specifically defining these terms, Congress has purposefully excluded from the exempt category not only those who do not believe in a relation to a Supreme Being or whose relation to a Supreme Being does not involve duties, but also those whose views are "essentially political, sociological, or philosophical" or are based on "a merely personal moral code." The present decision, we submit, sustained the conscientious objector claim of a registrant whose beliefs were based merely on his rational decision that war is undesirable. Hence it cast serious doubts on Congress' power to deny the exemption to those whose sincere views are "essentially political, sociological, or philosophical" notwithstanding the fact that such persons would not appear to be protected by the "Religion Clause" of the First Amendment.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 206—September Term, 1963

(Argued November 15, 1963, Decided January 20, 1964.)

Docket No. 28346

UNITED STATES OF AMERICA, APPELLEE,

v.

DANIEL ANDREW SEEGER, DEFENDANT-APPELLANT.

Before:

LUMBARD, *Chief Judge,* and
KAUFMAN and HAYS, *Circuit Judges.*

KAUFMAN, *Circuit Judge:*

On this appeal, Daniel Andrew Seeger contends that he was improperly denied an exemption from military service because his conscientious objections were not dependent upon "a belief in a relation to a Supreme Being" as required by § 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. § 456(j). Seeger was convicted of violating 50 U.S.C. App. § 462, because of his refusal to submit to induction,

as ordered by his local Selective Service Board. At his trial before Judge Levet without a jury, he stipulated that he received an induction notice and that he refused to comply with its terms.

The statute in question, as revised in 1948, provides that the Selective Service Act shall not "be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." 50 U.S.C. App. § 456(j). In filling out the form for those who claim conscientious objector status, Seeger found himself unable to assert categorically that he believed in a Supreme Being.

Although the government has conceded that Seeger's abhorrence of war is both sincere and predicated on "religious training and belief," as the phrase has been defined by this Court prior to the addition of the "Supreme Being" clause to the statute, *United States* v. *Kauten*, 133 F. 2d 703 (2d Cir. 1943), appellant's draft board denied the exemption on the basis of its finding that Seeger's views were not grounded upon "a belief in a relation to a Supreme Being." Seeger asserts that the "Supreme Being" requirement, as applied to him, constitutes a law respecting an establishment of religion, within the meaning of the First Amendment, and an arbitrary classification, violative of the due process clause of the Fifth Amendment.

I.

As required by law, Seeger registered with his local draft board upon attaining his eighteenth birthday in September of 1953. Apparently, his pacifist sympathies had not yet become fully developed, for in filling out his classification questionnaire, he ignored the claim for conscientious objector exemption, and simply indicated that he believed himself entitled to a student deferent. Initially classified 1-A, Seeger subsequently received the 2-S deferment and remained in that classification until August, 1958, when he was once again reclassified as 1-A.

On July 12, 1957, Seeger wrote to his local board, and for the first time revealed the conscientious objections to military service which were to lead to his refusal to submit to induction, and ultimately, to his conviction. In this letter, and in the forms and statements which soon followed, he sought to put into words the deeply-rooted beliefs and sentiments which formed the basis of his claim for an exemption.

The initial letter was itself not lengthy. "As a result of the resolution of a number of problems of conscience with which I have been preoccupied for the past months," Seeger wrote, "I am bound to declare myself unwilling to participate in any violent military conflict, or in activities made in preparation for such an undertaking. My decision arises from what I believe to be considerations of validity from the standpoint of the welfare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain. I have concluded that war, from the practical standpoint, is futile and self-defeating, and that from the more important moral standpoint, it is unethical."

The nature and foundation of Seeger's objections were further illuminated in his response to the special form for conscientious objectors, prepared by the Selective Service System and forwarded to appellant by his local board. Although executing the claim for exemption from both combatant and non-combatant training and service, he significantly altered the wording of the printed form. Had he adopted the printed statement verbatim, Seeger would have declared that he was, "by reason of my religious training and belief, conscientiously opposed to participation in war in any form * * *" Seeger was willing to endorse this oath as his own, but only after placing quotation marks around the word "religious," and deleting the words "training and."

His reply to the first question on the form, which inquired into his belief in a Supreme Being, was ultimately to prove fatal to Seeger's claim. Refusing to assert a simple belief or disbelief in a deity, Seeger felt compelled to express his convictions in more extensive terms. In a statement attached to the questionnaire, he explained his feeling that "the existence of God cannot be proven or disproven, and the essence of His nature cannot be determined. I prefer to admit this, and leave the question open rather than answer 'yes' or 'no.'" Seeger was anxious to explain, however, that "skepticism or disbelief in the existence of God does not necessarily mean lack of faith in anything whatsoever * * * Such personages as Plato, Aristotle and Spinoza evolved comprehensive ethical systems of intellectual and moral integrity without belief in God, except in the remotest sense." Finally, rejecting dependence upon his Creator for a guide to morality, Seeger asserted "more respect for * * * belief in and devotion to goodness and virtue

for their own sakes, and a religious faith in a purely ethical creed."

With obvious sincerity, Seeger articulately attempted further to expound the ethical position to which he felt driven by his conscience. "It is our moral responsibility," he wrote, "to search for a way to maintain the recognition of the dignity and worth of the individual, the faith in reason, freedom, and individuality, and the opportunity to improve life for which democracy stands." In language which underscored the ethical foundation of his faith, he decried "the tremendous spiritual price that man pays for his willingness to resort to the mass destruction of human life to perpetrate his 'ideals.'" "I cannot," Seeger insisted, "participate in actions which betray the cause of freedom and humanity. Experience with the past indicates that our armament policy will lead to war, and war, with its indiscriminate crushing of human personality, cannot preserve moral values * * * To resort to immoral means is not to preserve or vindicate moral values, but only to become collaborators in destroying all moral life among men."

Unmoved by his appeal, the selective service board voted to retain Seeger's 1-A classification, and ordered him to report for a pre-induction physical examination. When a personal appearance before the board failed to produce a different result, Seeger sought review by an Appeal Board which, in routine fashion, forwarded his file to the Department of Justice for an advisory opinion. The Department, in turn, requested the Federal Bureau of Investigation, as it does in all such cases, to investigate the accuracy and sincerity of Seeger's claims. And, as a result of this investigation, a highly favorable portrait of the appellant began to develop.

Seeger, it was revealed, was the son of an "exceptionally religious" Roman Catholic family, and two of his uncles had become priests. An honor student in high school, Seeger's academic record in college was outstanding, and he had been selected as editor-in-chief of his college newspaper. Friends, teachers and employers interviewed by the Bureau spoke highly of his personal qualities, with particular emphasis being placed on Seeger's unquestioned integrity and sincerity. It was noted, finally, that Seeger had no record whatsoever of legal or economic difficulties.

A résumé of this investigation was forwarded to a Hearing Officer of the Department of Justice, and a hearing was conducted in which two witnesses joined Seeger to appear in his behalf. As summarized in the report of the Justice Department, introduced into evidence below, the Hearing Officer reported that Seeger "impressed him as a truthful, decent young citizen who conscientiously objects to joining in any manner any activity which would bear on military affairs." Emphasizing Seeger's "extreme intelligence and lucidity," the Officer concluded "that the registrant is completely sincere in making his claim and that the character of registrant's beliefs, as adduced at the hearing and from the various documents on file, are honest." As further summarized by the Justice Department, the Officer added that Seeger "is opposed to participation in war in any form; that his conscientious objections are based upon his individual training and belief, both of which include research in religious and cultural fields; [and] that the registrant is sincere in his claim which is made in good faith." The Hearing Officer concluded by recommending that "the appeal of the registrant

based upon grounds of conscientious objection be sustained."

Despite this recommendation and the results of the FBI investigation, the Justice Department advised against allowing Seeger an exemption. It is immediately apparent from a reading of the Department's report that its decision rested entirely on the finding that Seeger's objections, however sincere, were not based upon "a belief in a relation to a Supreme Being," as required by § 6(j) of the Act. Presumably for the same reason, the Appeal Board voted unanimously to retain Seeger's 1-A classification. The Presidential Appeal Board affirmed, and Seeger was ordered to report for induction. Reporting as directed, and having been found acceptable for military service, Seeger refused to submit to induction and the present prosecution and conviction ensued.[1]

II.

The legislative background which underlies our present draft laws and their exemption for conscientious objectors has been thoroughly and recently explored by this court in *United States* v. *Jakobson,* 325 F. 2d 409 (2d Cir. 1963). See also Conklin, Conscientious Objector Provisions: A View in the Light of *Torcaso* v. *Watkins,* 51 Geo. L. J. 252 (1963). It would be in order, however, to review that background in brief résumé. The Draft Act of 1917, 40

[1] Reporting, having been found acceptable, and taking all required steps short of the final submission to induction, Seeger is able here to challenge constitutional infirmities in the "jurisdiction" of the Board which denied him the exemption. *Estep* v. *United States,* 327 U.S. 114 (1946). Compare *Falbo* v. *United States,* 320 U.S. 549 (1944).

Stat. 78, afforded a statutory exemption only to those objectors affiliated with a "well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form * * *" During the height of World War I, the constitutionality of this narrow provision was tersely upheld against First Amendment challenges, despite its limitation to specific, organized historic pacifist churches. *Selective Draft Law Cases*, 245 U.S. 366, 389-90 (1918). But see Kurland, Religion and the Law 37-38 (1962).

The conscientious objector provisions of the 1940 selective service act were more broadly drafted. In this statute, in effect throughout the Second World War, an exemption from combatant training was afforded to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 54 Stat. 889. Called upon to illuminate the congressional reference to "religion," Augustus Hand, writing for this court in *United States* v. *Kauten*, 133 F. 2d 703 (2d Cir. 1943) offered this often-cited definition: "Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe—a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it. It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets * * * Recognition of this obligation moved the Greek poet Menander to write almost twenty-four hundred years ago: 'Conscience is a God to all mortals'; impelled Socrates to obey the voice of his 'Daimon' and led

Wordsworth to characterize 'Duty' as the 'Stern Daughter of the Voice of God.'"

"There is a distinction," the Court continued, "between a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous and a conscientious objection to participation in any war under any circumstances. The latter, and not the former, may be the basis of exemption under the Act. The former is usually a political objection, while the latter, we think, may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse." 133 F. 2d at 708.

Yet, while this expanded concept of religious belief was adopted in this circuit, *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521 (2d Cir. 1943); *United States ex rel. Reel* v. *Badt*, 141 F. 2d 845 (2d Cir. 1944), and was recognized as a constitutionally required definition of religion, *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 658 (1943) (dissenting opinion of Frankfurter, *J.*), it was rejected in favor of a narrower standard by the Court of Appeals for the Ninth Circuit in *Berman* v. *United States*, 156 F. 2d 377, cert. denied, 329 U.S. 795 (1946). Over the vigorous dissent of Judge Denman, the *Berman* court held that a belief which was not dependent upon faith in a Deity or superhuman power was in no sense religious, as Congress used the term. In revising the conscientious objector provision for the Selective Service Act of 1948, Congress expressly approved the *Berman* definition, and specifically required a "belief in relation to a Supreme Being" as a pre-requisite for exemption.

III.

The exemption, as revised in 1948 by the addition of the "Supreme Being" definition of religion, has been upheld against constitutional challenges by the courts of this and other circuits on several occasions since its enactment. *United States* v. *Bendik*, 220 F. 2d 249 (2d Cir. 1955);[2] *Clark* v. *United States*, 236 F. 2d 13 (9th Cir. 1956), cert. denied, 352 U.S. 882 (1956); *George* v. *United States*, 196 F. 2d 445 (9th Cir. 1952), cert. denied, 344 U.S. 843. Most recently, the Court of Appeals for the Ninth Circuit, in a brief, three-paragraph opinion, refused to reconsider its holdings in the *Clark* and *George* cases, and adhered to its position that the Supreme Being requirement was a permissible legislative classification. *Etcheverry* v. *United States*, 320 F. 2d 873 (9th Cir. 1963), cert. denied, 84 S. Ct. 331 (1963). Like the trial judge below, *Bendik*, *Clark* and *George* held that the exemption for conscientious objectors was an act of legislative grace, and could hence be granted upon any condition which Congress desired to impose. We find it unnecessary to determine whether an exemption for some or all conscientious objectors is a constitutional necessity, or is merely dependent upon the will of Congress. See *Selective Draft Law Cases*,

[2] In no real sense may our decision today be said to "overrule" *Bendik*. From a reading of the *Bendik* opinion, it is clear that the court did not consider the argument that the Supreme Being requirement distinguished *among* religious beliefs, the question we decide today. *Bendik*, rather, was concerned with the permissibility of a distinction between religious and nonreligious objectors. For this reason, as well as the fact that the grounds upon which *Bendik* relied was placed in serious question by *Speiser* v. *Randall*, *infra*, *Bendik* neither conflicts with nor can be dispositive of the present appeal.

245 U.S. 366 (1918); *Hamilton* v. *Regents*, 293 U.S. 245 (1934). Compare *School District of Abington Township* v. *Schempp*, 374 U.S. 203, 250–53 (1963) (concurring opinion of Brennan, J.). For it now seems well-established that legislative power to deny a particular privilege altogether does not imply an equivalent power to grant such a privilege on unconstitutional conditions. See *Speiser* v. *Randall*, 357 U.S. 513 (1958). It could hardly be argued, for example, that the ability of Congress to deny an exemption to all conscientious objectors would permit Congress to limit that exemption to objectors of one particular religious denomination. We are thus compelled to determine the constitutionality of the particular limitation involved, and to consider whether the requirement of a belief in a Supreme Being could be validly employed to reject Seeger's claim to an exemption under existing constitutional doctrines.

IV.

In *Everson* v. *Board of Education*, 330 U.S. 1 (1946), the Supreme Court offered what has perhaps become the most frequently quoted exposition of the significance of the "establishment clause." In the words of the Court, " 'the establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance * * * In the words of Jefferson, the clause against establishment

of religion by law was intended to erect 'a wall of separation between church and state.'"

But, if the Supreme Court has been steadfast in its insistence that government refrain from "aiding" one religion or all religions, *School District of Abington Township* v. *Schempp*, 374 U.S. 203 (1963); *Engle* v. *Vitale*, 370 U.S. 421 (1962); *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203 (1948), it has been equally vigilant in rejecting any reading of the First Amendment which might dictate a policy of governmental hostility to religion or religious beliefs. *Zorach* v. *Clauson*, 343 U.S. 306 (1952); *Everson* v. *Board of Education, supra*. The Constitution "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary." *Everson* v. *Board of Education*, 330 U.S. at 18. Indeed, one member of the Court has recently cautioned against a rigid interpretation of the establishment clause for fear of treading upon the individual citizen's right to the free exercise of his religion, a privilege equally basic to the First Amendment. *School District of Abington Township* v. *Schempp*, 374 U.S. at 247 (concurring opinion of Brennan, J.). And the "free exercise" clause has been intrepreted so as to require government to afford private citizens the utmost freedom to remain true to their religious faith, and to observe the practices sacred to their religion, except when such conduct would impinge upon the equal rights of others, or would interfere with an overriding social objective. See *Sherbert* v. *Verner*, 374 U.S. 398 (1963); cf. *Braunfeld* v. *Brown*, 366 U.S. 599 (1961).

Although stopping short of an argument that the First Amendment compels an exemption for those whose religions prohibit participation in war, the gov-

ernment invokes just such a view of the "free exercise" clause to support the legislative classification challenged in the present case. In essence, the government appears to argue that the spirit of the "free exercise" clause is satisfied when religious objectors are permitted to avoid a course of conduct which their religion condemns. Stated in other words, the government's argument is that Congress was merely seeking to give the greatest possible latitude to the free exercise of religion when it enacted the conscientious objector provisions; since the Constitution does not require that a similar freedom be afforded the exercise of nonreligious beliefs, it is reasonable to distinguish between them.

It is, of course, vital to such a line of reasoning that "religion" and "religious" be properly defined. "A statute could scarcely be defended * * * if it protected the 'free exercise' of only a few favored religions or preferred some religions over others without reasonable basis for doing so." *United States* v. *Jakobson*, 325 F. 2d 409 (2d Cir. 1963). In this regard, the government attempts to justify the "Supreme Being" definition by asserting the propriety of a distinction between beliefs which are solely the result of individual reflection and those which the believer assumes to be the product of divine commands. Congress would be justified, or so it is argued, in refusing to defer to those individuals who merely invoke their own fallible judgment in opposition to that of the legislature; it would be less so with respect to those whose refusal to serve is based upon obedience to a power higher than that exercised by a mortal Congress.

But while we find this argument persuasive, we are unable to consider it dispositive of the case before us. For we feel compelled to recognize that a requirement of belief in a Supreme Being, no matter how broadly

defined, cannot embrace all those faiths which can validly claim to be called "religious." Thus it has been noted that, among other well-established religious sects, Buddhism, Taoism, Ethical Culture and Secular Humanism do not teach a belief in the existence of a Supreme Being. *Torcaso* v. *Watkins,* 367 U.S. 488, 495 n. 11 (1961). Indeed, our country has long prided itself on the enormous diversity of religious beliefs which have been able to find acceptance and toleration on these shores. In this regard, Mr. Justice Brennan has recently explained the development of judicial attitudes towards the First Amendment, by observing that "our religious composition makes us a vastly more diverse people than were our forefathers. They knew differences chiefly among Protestant sects. Today the Nation is far more heterogeneous religiously, including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and those who worship no God at all." *School District of Abington Township* v. *Schempp,* 374 U.S. 203, 240 (1963) (concurring opinion). In the face of this vast conglomeration of differing ideas and ideals, it is not surprising that no single concept may be found which is common to all.

In *Torcaso* v. *Watkins,* 367 U.S. 488 (1961), the Supreme Court struck down as invalid a state statute requiring notaries public to affirm their belief in the existence of God. Although referring to the evils historically attendant upon the requirement of a religious oath for public office, the Court was careful to place its decision on far broader grounds. Government could not, the *Torcaso* court declared, place the power and authority of the state "on the side of one particular sort of believers—those who are willing to say that they believe in 'the existence of God.'" Belief in a Deity was, for the Court, "a belief in some partic-

ular kind of religious concept." And the requirement that candidates for office affirm their devotion to such a concept was, the court held, beyond the constitutional powers of the state.

In a very real sense, the decision in *Kauten* was the precursor of *Torcaso*. For in *Kauten's* broad definition was embraced the recognition that "religion" could not be confined to a belief in a supernatural power; that today, a pervading commitment to a moral ideal is for many the equivalent of what was historically considered the response to divine commands. The *Kauten* test represents an acknowledgment that for many in today's "skeptical generation," just as for Daniel Seeger, the stern and moral voice of conscience occupies that hallowed place in the hearts and minds of men which was traditionally reserved for the commandments of God. It is in this respect that *Kauten* has found its way into the pages of the United States Reports, generally accompanied by a recognition of the impropriety inherent in a governmental determination of what is a "true" or "acceptable" religious belief. See *Saia* v. *New York,* 334 U.S. 558, 564 (1948) (dissenting opinion of Frankfurter, *J.*); *West Virginia State Board of Education* v. *Barnette, supra,* at 659. Cf. *United States* v. *Ballard,* 322 U.S. 78 (1944).

And if a distinction between internally derived and externally compelled beliefs raises serious theoretical problems, the practical difficulties which it engenders are no less perplexing. When Daniel Andrew Seeger insists that he is obeying the dictates of his conscience or the imperatives of an absolute morality, it would seem impossible to say with assurance that he is not bowing to "external commands" in virtually the same sense as is the objector who defers to the will of a supernatural power. Indeed, we would create an

impossible task for draft boards and courts alike were we to insist upon a distinction between Arno Sascha Jakobson's devotion to the mystical force of "Godness" and Daniel Andrew Seeger's compulsion to follow the paths of "goodness."[3]

It is to be emphasized once again that there is no question in this case, as there was in *Jakobson,* as to the sincerity of Seeger's beliefs or the tenacity with which they are held. With commendable candor, the government has fully conceded that Seeger's views fall squarely within the definition of "religion" announced for this Circuit in *Kauten,* and subsequently reaffirmed in *Phillips* and *Reel.* While we are, therefore, most reluctant to find that Congress, in a sincere attempt to balance the personal rights of a minority with the insistent demands of our national security, has transgressed the limits imposed by the Constitution, we are compelled so to hold. This is not to deprecate the enormity of the congressional burden; we fully appreciate the duty and powers of Congress to ensure peace and stability in these unstable times by recruiting citizens for the armed forces. We further recognize the concern for personal liberties and religious freedom which led to the enactment of the conscientious objector exemption in the face of the perils which confront us throughout the world. At

[3] The government has argued that the "Supreme Being" standard may be justified as simplifying the task of the draft boards by providing an objective standard for the determination of sincerity and religious belief. In light of *Jakobson's* expanded definition of "Supreme Being," the test would hardly be free from complexities. In any event, "government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that nonreligious means will not suffice." *School District of Abington Township* v. *Schempp,* 374 U.S. 203, 265 (1963) (concurring opinion of Brennan, J.).

the same time, however, we cannot conclude that specific religious concepts, even if shared by the overwhelming majority of the country's organized religions, may be selected so as to discriminate against the holders of equally sincere religious beliefs. Especially when considered in the light of *Torcaso* and the still more recent teachings of the Supreme Court, a line such as is drawn by the "Supreme Being" requirement between different forms of religious expression cannot be permitted to stand consistently with the due process clause of the Fifth Amendment. We are convinced that the believer in a Supreme Being is not for that reason alone more entitled to have his conscience respected by a draft board than is Daniel Seeger. In the words of Madison's historic Remonstrance, recently cited by the Supreme Court in *Engle* v. *Vitale,* 370 U.S. 412, 421 (1962), "religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate."

We wish to make clear, moreover, that by holding the "Supreme Being" requirement to create an impermissible classification under the circumstances present here, we are not passing upon the validity of legislative classifications in terms of religion in any other context.[4] As an observer has recently noted, "to characterize constitutional limitations as inflexible imperatives is an unproductive form of judicial activity." Pollak, Foreword: Public Prayers in Public

[4] It is not inappropriate to note, however, that two courts recently confronted with statutes providing tax exemptions for "religious" organizations interpreted "religion" so as to include groups possessing no theistic beliefs, expressly to avoid constitutional difficulties. *Fellowship of Humanity* v. *County of Alameda*, 153 Cal. App. 2d 673, 315 P. 2d 394 (1957); *Washington Ethical Society* v. *District of Columbia*, 249 F. 2d 127 (D.C. Cir. 1957). See also 58 Colum. L. Rev. 417 (1958).

Schools, The Supreme Court—1962 Term, 77 Harv. L. Rev. 62, 67 (1963). We feel it the soundest course to deal with such problems as they are presented to us, and not to lay down hard and fast rules which may be inappropriate to some of the many and varied interactions between government and religion.

In *Zorach* v. *Clauson*, 343 U.S. 306, 313 (1952), the Supreme Court acknowledged that "we are a religious people whose institutions presuppose a Supreme Being." Our disposition of this appeal is in keeping with this declaration. It has often been noted that the principal distinction between the free world and the Marxist nations is traceable to democracy's concern for the rights of the individual citizen, as opposed to the collective mass of society. And this dedication to the freedom of the individual, of which our Bill of Rights is the most eloquent expression, is in large measure the result of the nation's religious heritage. Indeed, we here respect the right of Daniel Seeger to believe what he will largely *because* of the conviction that every individual is a child of God; and that Man, created in the image of his Maker, is endowed for that reason with human dignity.

Judgment reversed.

APPENDIX B

UNITED STATES OF AMERICA,

v.

DANIEL ANDREW SEEGER, DEFENDANT.

No. 62 Cr. 1003.

UNITED STATES DISTRICT COURT

S. D. NEW YORK.

APRIL 24, 1963.

LEVET, District Judge.

On November 13, 1962, the defendant was indicted for unlawfully and knowingly failing "to submit to induction at the time and place fixed in an Order to Report for Induction mailed to him by his Selective Service System Local Board." 50 U.S.C. Appendix § 462; 32 C.F.R. § 1632.14.

Defendant pleaded "not guilty" on November 20, 1962. A trial was conducted on March 26, 1963, at which time defendant waived a trial by jury. At the close of the trial decision was reserved.

It is undisputed that defendant's Selective Service File (Exs. 1–60) accurately discloses the following:

Defendant registered with Local Board 66 upon his eighteenth birthday on September 4, 1953. On October 21, 1953 he filed his Classification Questionnaire (S.S.S. Form 100) (Ex. 3). It reflected that he was unmarried and was a chemical engineering student at Cooper Union School of Engineering. He did not execute the claim for conscientious objector exemption

which appears on page 7 of the Questionnaire. He stated that he thought he was entitled to deferment as a student.

The Minutes of Board Action (p. 8 of Questionnaire) reflect that he was initially classified 1–A on October 27, 1953 and that he was reclassified 2–S as a student on July 26, 1955. He remained in that classification until August 26, 1958, when he was reclassified 1–A.

On July 15, 1957 defendant wrote to the Board that he was conscientiously opposed to participation in war. He was mailed a Special Form for Conscientious Objectors (S.S.S. Form 150) (Ex. 11) which he filed with supporting documents on July 29, 1957.

On the Special Form for Conscientious Objectors the defendant executed the Series I claim for exemption for both combatant and noncombatant service which reads:

> "(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and non-combatant training and service in the Armed Forces."

The defendant placed quotation marks around the word "religious" and struck out the word "training and."

In response to the Series II question, "1. Do you believe in a Supreme Being?" the defendant checked neither the "Yes" nor the "No" box but added a third box and the notation: "Please see attached sheet." The Board was also referred to the attached sheet for the answer to the Series II question:

> "2. Describe the nature of your belief which is the basis of your claim made in Series I

> above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation."

In the five-page statement attached to the Special Form the defendant stated in answer to the question as to his belief in a Supreme Being:

> "Of course, the existence of God cannot be proven or disproven, and the essence of his nature cannot be determined. I prefer to admit this and leave the question open rather than answer 'yes' or 'no'. * * *"

His answer to Series II, question 2, describing the views on which his objections to service are based, does not reflect that he believes in a Supreme Being imposing obligations on him superior to those arising from any human relation.

The defendant was continued in classification 2–S until August 26, 1958, when he was reclassified 1–A. On October 17, 1958, defendant was ordered to report for a pre-induction physical on October 29, 1958. On October 20, 1958, the Board received a request for a personal appearance, which was had on October 21, 1958. Following the personal appearance the Board voted to continue the 1–A classification.

The defendant prosecuted an appeal to the Appeal Board. The Appeal Board tentatively determined that he was not entitled to classification 1–O and forwarded the file to the Department of Justice for an advisory opinion.

The Federal Bureau of Investigation conducted a background investigation. Its reports were summarized in a résumé (Ex. 30B) and the files assigned to a Hearing Officer. The defendant was provided with a copy of the résumé prior to the hearing which was held on September 10, 1959. Two witnesses appeared

on defendant's behalf. The hearing officer reported to the Department of Justice that he found the defendant to be sincere in his objection to war and recommended that exemption be granted. The Department of Justice, however, concluded that the defendant's objections were not based upon religious training and belief as required and defined by § 6(j) of the Universal Military Training and Service Act, and recommended to the Appeal Board that the exemption be denied.

The Appeal Board furnished the defendant with a copy of the Department of Justice recommendation and received a reply from him. The Appeal Board classified the defendant 1-A by unanimous vote on May 24, 1960. Upon the defendant's request, the National Director of Selective Service appealed on his behalf to the Presidential Appeal Board. The Presidential Appeal Board classified the defendant 1-A by a unanimous vote on August 25, 1960.

On October 3, 1960, defendant's Local Board mailed him an Order to Report for Induction on October 20, 1960 at the Armed Forces Examination and Induction Station, 39 Whitehall Street, New York, N.Y. On October 20, 1960, the defendant reported as directed and after having been found acceptable for military service refused to submit to induction.

Counsel also stipulated (Ex. 6) that defendant "refused to submit to induction at the time and place aforesaid claiming that the order was invalid as he had wrongfully been denied exemption as a conscientious objector."

Therefore, the sole issue that remains is the validity of the denial of exemption. In this connection, defendant argues that 50 U.S.C. Appendix § 456(j) is unconstitutional.

"There is no direct judicial review of the actions of the Appeal Boards. Questions concerning the classification of the registrant may be raised either in a petition for habeas corpus or as a defense to prosecution for failure to submit to induction into the armed forces." Witmer v. United States, 348 U.S. 375, 377, 75 S. Ct. 392, 393–394, 99 L. Ed. 428 (1954); see also Estep v. United States, 327 U.S. 114, 66 S. Ct. 423, 90 L. Ed. 567 (1946).

"The range of review is the narrowest known to law." United States v. Corliss, 280 F. 2d 808, 811 (2 Cir., 1960), cert. denied, 364 U.S. 884, 81 S. Ct. 167, 5 L. Ed. 2d 105; Blalock v. United States, 247 F. 2d 615 (4 Cir., 1957); Campbell v. United States, 221 F. 2d 454 (4 Cir., 1955).

As was said in Blalock, supra, 247 F. 2d at page 619:

> "The 'clearly erroneous' rule applied in equity appeals has no place here, nor even the 'substantial evidence' rule of the Administrative Procedure Act, 5 U.S.C.A. § 1009. Congress gave the courts no general authority of revision over draft board proceedings, and we have authority to reverse only if there is a denial of basic procedural fairness or if the conclusion of the board is without any basis in fact. Witmer v. United States, 348 U.S. 375, 75 S. Ct. 392, 99 L. Ed. 428; Goff v. U.S., 4 Cir., 135 F. 2d 610."

This court has defined its function as follows:

> "The function of the District Court in cases such as these is to examine the entire file or record relating to the registrant's claim for conscientious objector classification to determine if there is any basis in fact to support the Board's determination. 'When the record dis-

closes any evidence of whatever nature which is incompatible with the claim of exemption we may not inquire further as to the correctness of the board's order.' United States v. Simmons, 7 Cir., 1954, 213 F. 2d 901, 904, reversed on other grounds Simmons v. United States, 348 U.S. 397, 75 S. Ct. 397, 99 L. Ed. 453. Courts cannot substitute their judgment on the weight of the evidence for that of the Board. Nor need they look for substantial evidence to support such determination." United States v. Corliss, 173 F. Supp. 677, 680 (S.D.N.Y. 1959), aff'd 280 F. 280 F. 2d 808 (2 Cir., 1960), cert. denied, 364 U.S. 884, 81 S. Ct. 167, 5 L. Ed. 2d 105.

THE REPORTS OF THE FEDERAL BUREAU OF INVESTIGATION AND THE HEARING OFFICER

Defendant contends that he was denied due process because he was not given copies of the above reports. This contention is without merit. The Appeal Board's denial of defendant's claim for exemption was based upon the recommendation of the Department of Justice (Ex. 30A), which, in turn, rested essentially on statement of non-belief filed by the defendant. This being the case, defendant has no right to either set of reports. Gonzalez v. United States, 364 U.S. 59, 63–66, 80 S. Ct. 1554, 4 L. Ed. 2d 1569 (1960). See also United States v. Nugent, 346 U.S. 1, 73 S. Ct. 991, 97 L. Ed. 1417 (1953); United States v. Corliss, 280 F. 2d 808, 810 (2 Cir., 1960), cert. denied 364 U.S. 884, 81 S. Ct. 167, 5 L. Ed. 2d 105 (1960).

CONSTITUTIONALITY OF TITLE 50 U.S.C. APPENDIX § 456(j)

The pertinent provisions of Title 50 U.S.C. Appendix § 456(j) are as follows:

"(j) Nothing contained in this title [sections 451–454 and 455–471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the

> armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *"

Section 5(g) of the Selective Training and Service Act of 1940 (50 U.S.C. Appendix § 305(g)) provided as follows:

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

In amending the 1940 Act and in enacting Section 6(j) of the 1948 Act (which is identical with § 6(j) of the 1951 Act here under discussion), Congress added the following language to the quotation above from the 1940 Act:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

Defendant's contentions as to the unconstitutionality of the above-mentioned clause are as follows:

1. Congress by passage of the 1948 amendment restricted a prior definition and the concept of "Religious training and belief" so as to relate it only to a belief "in a relation to a Supreme Being."

2. Congress thus created a preference and an aid in favor of conscientious objectors *who have a belief in a Supreme Being* against those whose objection is related to or based upon some other type of religious training and belief or on a non-religious training and belief.

3. Congress has thus, in effect, established as an official religion a religion that is related to a belief in a Supreme Being and has placed the support of the government behind this particular religious belief, thus violating the Establishment Clause of the First Amendment, the Due Process Clause of the Fifth Amendment, and the religious test clause of Article VI, Clause 3 of the Constitution providing that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

The First Amendment to the United States Constitution, in the applicable portion, states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Fifth Amendment provides that Congress may not deprive a person of life, liberty or property without due process of law.

There was proof by stipulation that the grounds on which defendant claimed exemption are religious and arise from religious training and belief by reason of which defendant is conscientiously opposed to participation in war fall within the definitions of religion as set forth in the following cases, determined by the Second Circuit Court of Appeals: United States v. Kauten, 133 F. 2d 703 (1943); United States ex rel. Phillips v. Downer, 135 F. 2d 521 (1943); United States ex rel. Reel v. Badt, 141 F. 2d 845 (1944), cert. dismissed 328 U.S. 817, 66 S. Ct. 979, 90 L. Ed. 1599. (See minutes 35, 36)

In substance, those cases decided under the 1940 Act held that a sincere, absolute abhorrence of all war as ethically wrong, proceeded from a "religious impulse" and met the test of the statute, which, in the same language as the 1948 and 1951 Acts, exempted one who "by reason of religious training and belief is * * * opposed to participation in war in any form" without further elaboration. A diametrically contrary conclusion was reached by the Ninth Circuit Court of Appeals in Berman v. United States, 156 F. 2d 377 (9 Cir., 1946), cert. denied, 329 U.S. 795, 67 S. Ct. 480, 91 L. Ed. 680. It was there held that Congress intended to exempt only those who based their objections on belief in a deity commanding abstinence from war on pain of supernatural sanction.

In enacting Section 6(j) of the 1948 Act (which is identical with Section 6(j) of the 1951 Act here under discussion), Congress explicitly adopted the view of the Berman case and added the limiting definition:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

See Selective Service Act of 1948 Senate Committee Report, United States Code Congressional Service, 80th Congress, 1948, 2d Session, P. 1989 at p. 2002.

However, a defendant's inability to assert a belief in a Supreme Being as a basis for the claim of exemption has been sustained as sufficient for a denial of a claim for exemption. United States v. Bendik, 220 F. 2d 249 (2 Cir., 1955); United States v. DeLime, 223 F. 2d 96 (3 Cir., 1955); Davidson v. United States, 225 F. 2d 836 (9 Cir., 1955); Clark v. United States,

236 F. 2d 13 (9 Cir., 1956), cert. denied, 352 U.S. 882, 77 S. Ct. 101, 1 L. Ed. 2d. 80.

In the Bendik case, supra, Judge Smith, speaking for the Second Circuit, wrote:

> "* * * the sincerity of his conscientious scruples against service was immaterial, since admittedly they were not founded on belief in a Supreme Being, a requirement as a ground for deferment under the Act. 50 U.S.C.A. Appendix, § 456(j). Berman v. United States, 9 Cir., 156 F. 2d 377, certiorari denied 329 U.S. 795, 67 S. Ct. 480, 91 L. Ed. 680. * * *" (220 F. 2d p. 252)

In Clark, supra, the defendant raised the same constitutional questions relied upon by defendant here but the Ninth Circuit upheld denial of exemption. Certiorari was denied. See also George v. United States, 196 F. 2d 445 (9 Cir., 1952), cert. denied, 344 U.S. 843, 73 S. Ct. 58, 97 L. Ed. 656.

There is no violation of the religious test provision of Article VI, Clause 3. Exemption from military service can hardly be deemed an "Office or public Trust under the United States." Such a view is indeed specious. Clark v. United States, 236 F. 2d 13, 23 (9 Cir., 1956), cert. denied, 352 U.S. 882, 77 S. Ct. 101, 1 L. Ed. 2d 80. Cf. Torcaso v. Watkins, 367 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961).

Likewise, Congress has not established a church or coerced religious belief, in violation of Amendment I. (Arver v. United States (Selective Draft Law Cases), 245 U.S. 366, 38 S. Ct. 159, 62 L. Ed. 349 (1918)). Congress has not set up a state church, nor aided any religion, nor compelled attendance or non-attendance at any church. Neither has it compelled profession or refraining from profession of any belief or disbelief, nor imposed punishment for any conduct.

No financial support of government has been devoted to any particular religious belief (cf. Everson v. Board of Education, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1947)) nor has any compulsive religious service been supported (cf. Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962)).

Congress, by Article 1, Section 8, is given power to raise and support armies and to provide and maintain a navy. Therefore, "Congress has power to raise armies, to determine who shall serve in such armies, and who shall be exempt, in time of peace and in time of war. Such powers are essential to national security. See United States v. Macintosh, 283 U.S. 605, 51 S. Ct. 570, 75 L. Ed. 1302; United States v. Henderson, 7 Cir., 1950, 180 F. 2d 711, certiorari denied, 1950, 339 U.S. 963, 70 S. Ct. 997, 94 L. Ed., 1372; Richter v. United States, 9 Cir., 1950, 181 F. 2d 591, certiorari denied, 1950, 340 U.S. 892, 71 S. Ct. 199, 95 L. Ed. 647; Warren v. United States, 10 Cir., 1949, 177 F. 2d 596, certiorari denied, 1950, 338 U.S. 947, 70 S. Ct. 485, 94 L. Ed. 584. * * *" United States v. Bartell, 144 F. Supp. 793, 796 (S.D.N.Y. 1956). The question of exemption from military service is a part of the procedure of raising an army, which is vested in Congress and its instrumentalities. United States ex rel. Goodman v. Hearn, 153 F. 2d 186, 188 (5 Cir., 1946), cert. dismissed, 329 U.S. 667, 67 S. Ct. 24, 91 L. Ed. 589. The war power tolerates no limitations except those found in the Constitution or in applicable principles of international law. United States v. Mackintosh, 283 U.S. 605, 622, 51 S. Ct. 570, 75 L. Ed. 1302, overruled on other grounds, Girouard v. United States, 328 U.S. 61, 66 S. Ct. 826, 90 L. Ed. 1084 (1946).

Defendant relies upon certain decisions of the United States Supreme Court postdating draft exemption determinations, to wit, Torcaso v. Watkins,

367 U.S. 488, 495, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961); Engel v. Vitale, 370 U.S. 421, 430, 431, 432, 82 S.Ct. 1261, 8 L. Ed 2d 601 (1962); McGowan v. Maryland, 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961); Everson v. Board of Education, 330 U.S. 1, 15, 16, 67 S. Ct. 504, 91 L. Ed. 711 (1947); People of State of Ill., ex rel. McCollum v. Board of Education, 333 U.S. 203, 210, 211, 68 S. Ct. 461, 92 L. Ed. 649 (1948).

There is nothing in these decisions to justify the position defendant takes. Torcaso, supra, 367 U.S. at 493, 81 S. Ct. at 1682–1683, 6 L. Ed. 2d 982 quotes from Everson, supra: "Neither [i.e., state or nation] can pass laws which aid one religion, aid all religions, or prefer one religion over another." I do not interpret this statement to make it improper for Congress to exempt from military service certain individuals who are defined in the statute in question. Such a policy does not aid one religion or all religions or prefer one religion over another. It merely classifies those who, under certain conditions there specified, may secure exemption from military service. Certain individuals are affected but not religious organizations. Everson, supra, like McCollum, supra, involved questions of the power of a state to utilize its tax-supported public school system in aid of religious instruction. Neither does it appear that defendant can draw any aid or comfort from McGowan v. Maryland, supra, which related to Sunday Closing Laws, or from Engle v. Vitale, supra, the public school prayer case.

Other cases such as Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940); Washington Ethical Society v. District of Columbia, 101 U.S. App. D.C. 371, 249 F. 2d 127 (1957); and Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 315 P. 2d 394, have no bearing, as I see it, upon the claim of defendant.

Since the Congress has the right to determine who shall serve and who shall be exempt, it has the power to define the categories of those who may be thus exempted. Rase v. United States, 129 F. 2d 204 (6 Cir., 1942); United States v. Bartell, 144 F. Supp. 793, 796 (S.D.N.Y. 1956); see also Korte v. United States, 260 F. 2d 633 (9 Cir., 1958), cert. denied, 358 U.S. 928, 79 S. Ct. 313, 3 L. Ed. 2d 301. Therefore, exemption from military service is a matter of legislative grace and not a matter of right. Korte v. United States, supra, 260 F. 2d at 635.

In short, defendant's attack on the clause here involved is not new. Congress is bound to raise armies. No invidious discrimination exists. It is within the power of Congress to enable reasonable classifications to achieve the ends sought. No religion is thereby established. No freedom of worship is invaded. No compulsive acts are required. All persons of the class of defendant receive equal treatment. Congress, which has a right to refuse all exemptions, has a clear right to limit such exemptions. The statute determines those who may come within the terms of the exemptive grace, the policy which the legislative branch is empowered to select. The section involved is constitutional and there was a "basis in fact" for the Appeal Board's denial of exemption.

The defendant is, therefore, held guilty. Sentence is set for Wednesday, May 15, 1963, at 10:00 A.M. in Room 705. The customary pre-sentence report is to be prepared.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twentieth day of January one thousand nine hundred and sixty-four.

Present:

Hon. J. EDWARD LUMBARD,
Chief Judge,
Hon. IRVING R. KAUFMAN,
Hon. PAUL R. HAYS,
Circuit Judges.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

DANIEL ANDREW SEEGER, DEFENDANT-APPELLANT.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed.

A. DANIEL FUSARO, *Clerk.*

U.S. GOVERNMENT PRINTING OFFICE: 1964

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
Reasons for granting the writ	7
Conclusion	9
Appendix A	11
Appendix B	26

CITATIONS

Cases:

Peter v. *United States*, 324 F. 2d 173, petition for writ of certiorari pending, No. 787, this Term 7, 8, 9

Sicurella v. *United States*, 348 U.S. 385 6

United States v. *Seeger*, 326 F. 2d 846, petition for a writ of certiorari pending, No. —, this Term 7, 8, 9

Statutes:

50 U.S.C. App. 456(j), Universal Military Training and Service Act, 62 Stat. 611 ... 2, 6, 7, 8

50 U.S.C. App. 462 ..... 3, 6

725-446—64——1

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

ARNO SASCHA JAKOBSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit reversing respondent's conviction for refusal to submit to induction into the armed forces.

OPINION BELOW

The opinion of the court of appeals (App. A, pp. 11–25, *infra*) is reported at 325 F. 2d 409. The opinion of the district court (R. 42a–45a) [1] is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 22, 1963 (App. B, pp. 26–27, *infra*). A timely petition for rehearing was denied on February

[1] "R." refers to the appendix to respondent's brief in the court of appeals; "GX" indicates a Government exhibit.

10, 1964. On March 6, 1964, Mr. Justice Brennan extended the time for filing a petition for certiorari to and including March 24, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether respondent qualified as a conscientious objector under the definition appearing in Section 6(j) of the Universal Military Training and Service Act.

2. Whether Section 6(j) is constitutional if it does not permit respondent to qualify as a conscientious objector.

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides in pertinent part:

> Nothing contained in this title [sections 451, 453, 454, 455, 456, and 458–471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

STATEMENT

After a trial by the United States District Court for the Southern District of New York (a jury having been waived), respondent was convicted of having

violated 50 U.S.C. App. 462 by refusing to submit to induction into the armed forces. He was sentenced to imprisonment for a year and a day. On appeal, the conviction was reversed.

The government's entire case consisted of respondent's selective service file. Respondent took the stand in his own defense to explain items in the file. The material facts may be briefly summarized: Respondent registered with his local board in September 1953, shortly after reaching his eighteenth birthday. In filling out his classification questionnaire, he made no claim for exemption as a conscientious objector (GX 3, p. 7). He did, however, forward to the local board a doctor's certificate indicating that he suffered from a disabling back ailment (GX 4–6). After first being classified 1–A (GX 2), he sought and obtained a student classification, which was once renewed (GX 7, 12, 13, 15). Having taken a leave of absence from college in January 1956, he was then reclassified 1–A (GX 2, 16). Despite another doctor's certificate pertaining to his back disability (GX 18), he was found physically acceptable for service (GX 20). On April 18, 1956, the date upon which he was notified of his acceptance, he wrote to the local board, and first asserted his claim as a conscientious objector and requested the necessary form (GX 21, 40, p. 3).

Respondent answered affirmatively the question whether he believed in a Supreme Being. He went on, however, to explain his beliefs and their origin in 15 typewritten pages attached to his form (GX 24). He defined "Supreme Being" as "the Supreme Reality" of which "the existence of Man is the *result*"

[original emphasis], and stated that the essence of his "religious quest" was the search "for knowledge about the ultimate nature of that which was created by the Supreme Reality, namely, about Man" [emphasis omitted]. He further defined this quest as "searching for those objective moral standards which my divinely-given reason can accept as most closely satisfying the ultimate nature of Man." His opposition to war was said to be based on several grounds, including opposition to "the violently destructive nature of war * * * [and] sacrifice and destruction of countless innocent individuals," to the reduction of the enemy "to a mere abstraction," and to the "final degeneration of an inherently inadequate system of culturally-patterned values," Respondent said that his beliefs developed from his "own active efforts" and were influenced by personal experiences and by books, including works by Remarque, Koestler, Fromm and Dostoevski. As for the use of force or violence, respondent observed that the difficult question was "where to 'draw the line,' " but stated that elements entering into the decision would be (1) the likelihood of hurting innocent bystanders, (2) whether the action would be vengeful or "done sadly and only in order to help," (3) whether violence could be avoided, and (4) whether the use of violence would lead to more violence (GX 24).

On his original form, respondent requested only that he be exempted from combatant training and service—*i.e.*, that he be classified 1–A–O. On his appearance for a hearing before the local board, however, he submitted a letter requesting exemption

from noncombatant service as well on the ground that such participation would also conflict with his conscientious convictions (GX 31). He also submitted, at that time, 43 pages of "notes on religion" in further explanation of his beliefs (GX 32). In these pages, which cannot readily be summarized (see p. 15, *infra*), respondent referred on many occasions to his views of "Godness"—a term apparently used in place of the earlier reference to "the Supreme Reality."

The local board found that respondent's views were essentially sociological or philosophical or "at most a purely personal moral code," that they were "not based upon religious training and belief", and did "not reflect duties as dictated by a Supreme [B]eing superior to those arising from any human relation." It further found that respondent was available for non-combatant military service and classified him 1–A–O (GX 35).

Respondent appealed the classification. His case was referred to a hearing officer of the Department of Justice who concluded that respondent's opposition to military service was not "religious" in nature but was "based upon a personal moral code." The officer also found that respondent was "not sincere in his claim," and he recommended that the appeal be rejected (GX 40). The recommendation was submitted to the appeal board by the Department of Justice. After consideration of the recommendation and respondent's answer (GX 45), the appeal board classified respondent 1–A (GX 46). The Director of the Selective Service thereafter declined to take further action on respondent's appeal to him (GX 47,

52, 53). Respondent was ordered to report for induction; he reported and refused to take the oath or submit to induction (GX 54–58).

The district court found respondent guilty of having violated 50 U.S.C. App. 462 because it could not say, on the record as a whole, "that there was no basis in fact for the Appeal Board's finding of insincerity" (R. 44a).[2] The district court also applied the statutory definition of "religious training and belief" set out in Section 6(j) and concluded that "the Board was fully warranted in determining that defendant's views were not based on religious training and belief and in denying a I–O classification on that ground" (R. 45a).

The court of appeals noted that if Section 6(j) were construed to deny conscientious objector treatment to views of the sort held by respondent, its constitutionality would be doubtful (pp. 20–21, *infra*). It also observed that it was unlikely that Congress intended "to require lay draft boards and personnel of the Department of Justice to pass on nice theological distinctions between vertical and horizontal transcendence" (p. 23, *infra*). Consequently, it held that respondent's views came within the definition of "religious training and belief" supplied by Section 6(j),

[2] The district court first recognized that it was "not altogether clear" whether the hearing officer's finding that respondent was insincere had been adopted by the board but observed that it was necessary, under *Sicurella* v. *United States*, 348 U.S. 385, 392, to sustain all proposed grounds for the classification (R. 43a, n. 2).

and that the board's classification, which may have been based on a contrary finding,[3] could not stand.

REASONS FOR GRANTING THE WRIT

After the decision in this case, the Court of Appeals for the Second Circuit resolved the constitutional doubts it expressed in this opinion by concluding that Section 6(j) was unconstitutional insofar as it required belief in a Supreme Being as a condition for exemption from military service as a conscientious objector. *United States* v. *Seeger*, 326 F. 2d 846. We are filing a petition for certiorari in the *Seeger* case seeking review of the Second Circuit's constitutional holding. We believe that the question of statutory interpretation in this case is so inextricably related to the constitutional question in *Seeger* as to deserve this Court's consideration of the present decision together with *Seeger*.[4]

1. The opinion of the court of appeals clearly discloses that it overruled the finding of the appeal board, despite the admittedly narrow scope of review (p. 15, *infra*), because it entertained serious doubts regarding the constitutionality of a contrary application of Section 6(j). As a result of such doubts, the court, in effect, read out of Section 6(j) the words

[3] With respect to the alternate ground—lack of sincerity—the court of appeals held that there was "basis in fact" to support such a finding. But since the appeal board had not indicated whether its classification rested on such a finding, the conviction could not stand (pp. 24–25, *infra*).

[4] We present similar reasons in our memorandum in response to the petition for certiorari in *Peter* v. *United States*, No. 787, this Term.

"involving duties superior to those arising from any human relation" and broadly construed "Supreme Being" to encompass respondent's concept of "Supreme Reality" or "Goodness." We believe that it was Congress' purpose to deny conscientious objector treatment to persons espousing views such as those held by respondent and that the court's reading does not square with the statute.

2. As is set forth in our petition in *Seeger*, there is a direct conflict among the circuits as to the constitutionality of Section 6(j), with the Second Circuit aligned against the Ninth and Third Circuits. As a result of this conflict, the statutory language is interpreted differently in the Ninth Circuit than it is in the Second. In *Peter* v. *United States*, 324 F. 2d 173, petition for certiorari pending, No. 787, this Term, the Ninth Circuit sustained the denial of an exemption to a registrant whose beliefs were substantially similar to those of respondent in this case. We suggest here, as we do in our memorandum in *Peter*, that in the interest of uniform administration of the Act this Court should consider the questions of constitutionality and statutory interpretation together and authoritatively determine the scope of the present statute and of permissible Congressional action on this subject.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted and that this case should be considered together with *United States* v. *Seeger*, No. —, and *Peter* v. *United States*, No. 787.

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MARCH 1964.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 23—September Term, 1963.

(Argued October 2, 1963 Decided November 22, 1963.)

Docket No. 28137

UNITED STATES OF AMERICA, APPELLEE

v.

ARNO SASCHA JAKOBSON, APPELLANT

Before:

LUMBARD, *Chief Judge,*

FRIENDLY and SMITH, *Circuit Judges.*

FRIENDLY, *Circuit Judge:*

Arno Sascha Jakobson appeals from a judgment, entered in the Southern District of New York by Judge Palmieri, sitting without a jury, convicting him of refusal to submit to induction for combatant training as ordered by his Selective Service System Local Board, in violation of 50 U.S.C. App. § 462(a). He maintains that the notice of induction was invalid under § 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. § 456(j), which provides that the Selective Service Act shall not "be

construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."

Jakobson's parents were Jews who migrated to the United States in his early youth. When about 13 years of age, he became estranged from the Jewish faith, avowedly because of his distaste for what he considered the "bloodthirsty nationalism" exhibited in certain portions of the Old Testament, such as the Book of Joshua. He registered with his Local Board on September 2, 1953, a few days after his eighteenth birthday. In his classification questionnaire he made no claim of conscientious objection in the item provided for that purpose but did claim physical disqualification because of a back injury, a claim which he supported shortly thereafter by a note from his physician. When his Local Board classified him 1–A, he sought and obtained a student deferment, a status in which, save for one short interval, he remained until February 9, 1956, when he was reclassified 1–A. Nearly two years later he was ordered to report for a pre-induction physical examination. He presented a second physician's certificate describing his back condition but was found qualified for service and was so notified by the Local Board on March 18, 1958.

A month later Jakobson advised the Local Board that he believed himself exempt as a conscientious objector. With a 15-page addendum and three supporting letters, he filed the Special Form for Consci-

entious Objectors (SSS Form 150), claiming exemption from combatant service only; he answered the question "Do you believe in a Supreme Being" in the affirmative, with explanations of which we shall say more hereafter. At a hearing before the Local Board in the fall, he stated that even noncombatant service would result in "too many situations and relationships that would be a strain on my conscience * * *" and sought a 1-O classification which would exempt him from all military service but would subject him to a like period of civilian work contributing to the maintenance of the national health, safety, or interest; he also filed with the Board a 43-page discussion of his views.

The Local Board did not question Jakobson's sincerity but concluded that his claim was not based upon religious training and belief as defined in the statute; somewhat inconsistently with this view, it granted him classification 1-A-O, for noncombatant service, to which he was entitled only if he met the statutory test. Jakobson appealed. The Appeal Board tentatively determined that he was not entitled to classification as a conscientious objector in any form, and forwarded the file for an advisory recommendation by the Department of Justice, 32 C.F.R. § 1626.25(b). After an investigation by a hearing officer, and a generally favorable F.B.I. report on the evaluation of Jakobson by his acquaintances, the Department made the following recommendation to the Appeal Board:

> "The Hearing Officer concluded that the registrant is not opposed to participation in combatant or noncombatant military training and service by reason of his religious training and belief; that his claim is based upon a personal moral code and that he is not sincere in his claim. He recommended that the appeal of the

registrant based upon grounds of conscientious objection be not sustained.

"The Department of Justice finds that the registrant's claim is not sustained. It, therefore, recommends that the registrant's claim be not sustained by your Board."

Jakobson then sent a further communication to the Appeal Board, again explaining why he regarded his convictions as religious and seeking to excuse his tardiness in advancing his conscientious objection claim (and the change in his request from a 1–A–O to a 1–O classification). One reason offered was that when about six months before his pre-induction physical examination, he inquired of the clerk of the Local Board as to qualifications for a conscientious objector exemption, he was told this was given "only to individuals with a long and overtly-provable pacifist background", who could produce letters from ministers; he added that since his family background was not pacifist, he had been forced to face this difficult problem by himself, "from scratch," when it arose. On December 9, 1958, the Appeal Board classified him I–A. After unsuccessful efforts to carry the matter further, he was ordered to submit to induction, but, on completion of his induction physical, refused to take the step forward which symbolizes submission to induction. For this refusal he was indicted and convicted.

The Department of Justice had recommended denial of Jakobson's claim on two grounds: that he lacked sincerity, and that his objections were not based on religious training and belief within the meaning of the statute. The Appeal Board did not indicate on what ground it relied. *If we were certain that the denial of exemption rested on a finding of insincerity, Jakobson's five year delay in claiming conscientious objec-*

tion and his shift of position after making the claim would oblige us to affirm his conviction. The finality which the Act bestows on the decisions of the local and appeal boards, 50 U.S.C. App. § 460(b)(3), precludes judicial rejection of their findings as invalid unless "there is no basis in fact for the classification" given to the registrant, *Estep* v. *United States*, 327 U.S. 114, 122–23 (1946), and "any fact which casts doubt on the veracity of the registrant is relevant." *Witmer* v. *United States*, 348 U.S. 375, 381–82 (1955). In Jakobson's case, as in Witmer's, there were enough "objective facts before the Appeal Board to * * * cast doubt on the sincerity of his claim," 348 U.S. at 382, see also *United States* v. *Corliss*, 280 F. 2d 808, [Heise] 812, [Herold] 816 (2 Cir.), cert. denied, 364 U.S. 884 (1960). It is immaterial that on the cold record alone we would not have found Jakobson insincere or that the Local Board, which saw him, did not doubt his honesty. The resolution of conflicting inferences from personal observation and from the undisputed history was for the Appeal Board, as, indeed, it would be even if the scope of judicial inquiry were considerably broader than it is here. See *F.C.C.* v. *Allentown Broadcasting Corp.*, 349 U.S. 358, 364–65 (1955).

On the other hand, *if the Appeal Board, although believing Jakobson to be sincere, based its classification on the ground that his conscientious objection was not the result of religious training and belief, we would be* compelled to reverse the conviction and direct dismissal of the indictment. For we rule it an erroneous construction of the statute to conclude that Jakobson's beliefs fell outside its definition of religion.

To summarize Jakobson's religious views is not altogether easy. He begins by defining religion as the sum and essence of one's basic attitudes to the funda-

mental problems of human existence. He recognizes an ultimate cause or creator of all existence which he terms "Godness." In theory an individual's relationship to Godness can take one or the other of two forms, a "vertical" relationship in which man relates directly to Godness, or a "horizontal" one in which man relates to Godness indirectly by binding himself to the qualities of Godness that exist in every creation in Mankind and throughout the world. For himself Jakobson rejects the vertical "one-to-one" relationship because God is unknowable to man, and because action and spiritual growth purportedly based on a direct relationship with Godness must thus lead to error since man can reason but imperfectly about the unfathomable. Moreover, he finds objectionable the egocentric two-dimensional view which the vertical relationship fosters. For him Godness can be approached only through psychic involvement in the three-dimensional world. Inward turning causes spiritual diminution, egocentricity, and passive "putting up with" the evils of the world rather than an active attempt to change it. The way to arrive closer to Godness is by approaching the universals inherent in existence. The individual must deal directly with life, death, health, love, time—the "givens" of existence stemming from the Ultimate Cause—as he finds them in himself and others.

Jakobson sees himself as faced with an inescapable choice between acceptance or rejection of the order of the universe; for him this is the central problem of religion. He explains the positions of acceptance and rejection by reference to the characters of Ivan and Zossima in "The Brothers Karamazov." Ivan accepts God but rejects the world because of the evil in it; he can go on living and can love particular

individuals, but can only withdraw from the evil that he sees. Ivan doesn't oppose but passively and unhappily acquiesces; with such a position one could go to war by disavowing any personal responsibility. Zossima represents acceptance, which Jakobson defines as total affirmation of the basic blessedness of the fact of being—of goodness and "yesness." The taking of human life is incompatible with acceptance, which sees in all humanity "Godness"—the quality of having been created by the Ultimate Cause. Jakobson adopts the position of acceptance.

The definition of "religious training and belief" in § 6(j), somewhat unusual for a statute, is the end product of a long development. Without going back further into history, we shall start with the Draft Act of 1917, 40 Stat. 78. This exempted "a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organization * * *" The constitutionality of this provision under the First Amendment was upheld, rather summarily, in *Arver* v. *United States,* 245 U.S. 366, 389–90 (1918). The corresponding provisions in the bills that became the Selective Service Act of 1940 were similarly restrictive.[1] However, in the course of enactment Congress broadened the clause to exempt from combatant training any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form * * *," 54

[1] See Conklin, Conscientious Objector Provisions: A View in the Light of *Torcaso* v. *Watkins*, 51 Geo. L. J. 252, 269 and fn. 76 (1963).

Stat. 889;[2] "religious training and belief" was left undefined.

In *United States* v. *Kauten*, 133 F. 2d 703 (2 Cir. 1943), this court was concerned with a claim to exemption by an atheist whose objection to military service stemmed primarily from a belief that this country's involvement in World War II was a political scheme of President Roosevelt. In denying Kauten's claim Judge Augustus N. Hand said that "The provisions of the present statute * * * take into account the characteristics of a skeptical generation and make the existence of a conscientious scruple against war in any form, rather than allegiance to a definite religious group or creed, the basis of exemption." He distinguished between "a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous," the most that Kauten had, and "a conscientious objection to participation in any war under any circumstances * * * a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse," 133 F. 2d at 708. We applied this view to grant exemption in *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521 (2 Cir. 1943) and held it determinative in *United States ex re. Reel* v. *Badt*, 141 F. 2d 845 (2 Cir. 1944). Soon afterwards, however, the Ninth Circuit denied Herman Berman's right to exemption, although his views came closer to Phillips' and Reel's than to Kauten's. *Berman* v. *United States*, 156 F. 2d 377, cert. denied, 329 U. S. 795

[2] Congress declined to adopt an even broader amendment, urged by the American Civil Liberties Union, which would have exempted any person "who is conscientiously opposed to participation in war in any form" without any reference to religion. See Conklin, *supra*, 1 Geo. L. J. at 269–70.

(1946). In the course of its opinion, the court quoted a phrase in Chief Justice Hughes' dissent in *United States* v. *Macintosh,* 283 U. S. 605, 633–34 (1931), that "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relations," and added that an individual's "philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute." 156 F. 2d at 381. These two statements were combined into the second sentence of § 6(j) in the 1948 enactment to form the present statutory definition of "religious training and belief"; their derivation from the *Berman* opinion was not left in doubt.[3]

In construing the conscientious objector provision today, we must take account of statements of the Supreme Court subsequent to our decision, *United States* v. *Bendik,* 220 F. 2d 249 (2 Cir. 1955), sustaining the statute's constitutionality, and decisions to the same effect by other courts of appeals. Most pertinent is that in the Maryland notary public oath case, *Torcaso* v. *Watkins,* 367 U.S. 488, 495 (1961):

> "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements

[3] The Senate Report, S. Rep. 1268, 80th Cong., 2d Sess., p. 14 (1948), states:

"(j) Conscientious objectors:—This section reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 Act. Exemption extends to anyone who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service. (See United States v. Berman, 156 F. 2d 377, certiorari denied, 329 U.S. 795) * * *"

> which aid all religions as against nonbelievers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."

Since it is hard to deny that making exemption from military service turn on religious training and belief as stated in § 6(j) aids religions, and, more particularly, religions based on a belief in the existence of God, at least as significantly as permission to become a notary public, cf. *Speiser* v. *Randall,* 357 U. S. 513 (1958), the *Torcaso* statement requires consideration whether there is some other basis whereby a statute making religious training and belief a condition to exemption from military service can escape condemnation. The important distinction seems to us to be that, in contrast to Maryland's notary public oath, Congress enacted this statute, in mitigation of what we assume to be the constitutionally permissible course of denying exemptions to all objectors, for the very purpose of protecting "the free exercise" of religion by those whose religious beliefs were incompatible with military service which Congress had the right to require. See Mr. Justice Brennan concurring in *Abington School District* v. *Schempp,* 374 U. S. 203, 247–48, 295–98, 301–02 (1963). But, under present day thinking as to the First Amendment, a statute could scarcely be defended on this score if it protected "the free exercise" of only a few favored religions or preferred some religions over others without reasonable basis for doing so. See *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679, 728–29 (1872). The freedom which the Constitution protects is the freedom to exercise the religion of one's choice; a statute limited to certain religions would restrict the free exercise of the disfavored ones. The time-honored principle of construing a statute not only

to escape unconstitutionality but to avoid "grave and doubtful constitutional questions," *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407–08 (1909), thus dictates reading the definition of "religious training and belief" in § 6(j) as broadly as the words permit.

The statute clearly does not require belief in an anthropomorphic deity breathing, like the God of the Sistine ceiling, over the face of the waters. Long before 1948 men whose belief in a Supreme Being would not have been questioned had substituted the notion of "God out there" for "God up there."* The majority opinion in *Berman* recognized this, 156 F. 2d at 380; it asked only that one asserting religious belief should not "assign all beyond [our logical equations] as a great vacancy" but should entertain a belief "going beyond the physical revelations of life." Even more clearly Chief Justice Hughes' statement in *Macintosh*, made in the course of an eloquent dissent insisting on "our regard from the beginning for freedom of conscience," 283 U.S. at 631, was not intended to define "religion" or "God" in any narrow sense. We are by no means certain that the court that rejected Berman's claim because his evidence showed no belief in "a supreme power" of any kind would have rejected Jakobson's. Moreover, the statutory definition need not be regarded as precisely bounded by the *Berman* opinion when the compulsion to read it broadly is so strong. A contemporary theologian of high distinction and wide influence, who has taught at great universities on both sides of the Atlantic, Professor Paul Tillich, has written of God

*These phrases are used by John A. T. Robinson, Bishop of Woolwich, in a recent book, "Honest to God," a chapter from which is reprinted in Horizon Magazine, Sept. 1963, p. 4.

in terms that would surely embrace Jakobson's beliefs. As the footnote shows,[5] Jakobson's definition of religion as "the sum and essence of one's basic attitude

[5] Rejecting both the supernatural view which "separates God as a being, the highest being, from all other beings, alongside and above which he has his existence" and the naturalist view which identifies God with the universe, Tillich identifies God as the self-transcendent ground of being. "God as the ground of being infinitely transcends that of which he is the ground * * * To call God transcendent in this sense does not mean that we must establish a 'super world' of divine objects. It does mean that, within itself, the finite world points beyond itself. In other words it is self-transcendent." From this view, two seemingly self-contradictory consequences necessarily follow: "first, whatever one knows about a finite thing, one knows about God because it is rooted in him as its ground; second, anything one knows about a finite thing cannot be applied to God because he is * * * quite other, or * * * ecstatically transcendent." 2 Systematic Theology 9 (1957). Knowledge of God comes through the unity of these divergent consequences, the perception of the ground of being of every object of the natural and spiritual world accompanied by an understanding of transcendence of that thing of which it is the ground.

Other writings of Tillich which seem quite close to Jakobson's beliefs are these:

"Theism in all its forms is transcended in the experience we have called absolute faith. It is the accepting of acceptance without somebody or something that accepts. It is the power of being itself that accepts and gives the courage to be * * * It transcends both mysticism and personal encounter * * *" Courage to Be, 184–186 (1952).

"I have written of the God above the God of theism * * * In such a state (of absolute faith) the God of both religious and theological language disappears. But something remains, namely, the seriousness of that doubt in which meaning within meaninglessness is affirmed. The source of this affirmation of meaning within meaninglessness, of certitude within doubt, is not the God of traditional theism, but the 'God above God,' the power of being, which works through those who have no

to the fundamental problems of human existence" and his insistence that man can know nothing of God and that Godness can be approached only through psychic involvement in reality parallel the views of this eminent theologian rather strikingly. We cannot believe that Congress, aware of the constitutional problem, meant to exclude views of this character from its definition of religion,* or to require lay draft boards and personnel of the Department of Justice to pass on nice theological distinctions between vertical and horizontal transcendence. See Mr. Justice Jackson, dissenting, in *United States* v. *Ballard,* 322 U. S. 78, 92–95 (1944). It follows that if the decision of the Appeal Board rested solely on the view that

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name for it, not even the name God." 2 Systematic Theology 12 (1957)."

Again, in a passage adopted by the Bishop of Woolwich as the cornerstone of his own belief in God, Tillich says:

"The wisdom of all ages and of all continents speaks about the road to our depth * * * All those who have been concerned * * * with that road * * * have witnessed the same experience. They have found they were not what they believed themselves to be, even after a deeper level had appeared to them * * * The name of this infinite and inexhaustible depth and ground of all being is God. That depth is what the word God means. And if that word has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional you have learned of God, perhaps even that word itself. For if you know that God means depth, you know much about him * * * He who knows about depth knows about God." The Shaking of the Foundations (The Depth of Existence), 56–57 (1948).

* Jakobson comes closer to a traditional reading of "Supreme Being" than Tillich in one respect, namely, his acceptance of the notion of an original creator and supreme existence, which Tillich finds unacceptable as subjecting God to categories of finitude.

the beliefs professed by Jakobson did not meet the test of § 6(j), it was predicated on an erroneous view of the law and afforded no basis for ordering his induction.

Our inability to determine the grounds upon which the Appeal Board based Jakobson's classification complicates the disposition of his appeal. The usual rule is that when a case is submitted to fact finders on two legal theories, one right and the other wrong, their determination cannot stand. *United Pilots Ass'n* v. *Halecki,* 358 U.S. 613, 619 (1959). The applicability of this general principle in selective service cases is supported by a statement in *Sicurella* v. *United States,* 348 U.S. 385, 392 (1955): "Here, where it is impossible to determine on exactly which grounds the Appeal Board decided, the integrity of the Selective Service System demands, at least, that the Government not recommend illegal grounds," although the pertinence of that statement to the instant case is weakened by the fact that in *Sicurella* the sole ground recommended by the Department was held illegal. However, the Supreme Court cited with approval *United States ex rel Levy* v. *Cain,* 149 F. 2d 338 (2 Cir. 1945), where this Court granted a writ of *habeas corpus* because a special advisory panel had made a general conclusory recommendation that may have rested on grounds beyond its power and there was no proof that the Board had ignored it. And in *United States* v. *Erickson,* 149 F. Supp. 576, 579 (S.D.N.Y. 1957), Judge Kaufman acquitted a defendant where although "the Appeal Board could validly have rested its decision on the hearing examiner's impression that the defendant was insincere, there was no evidence that the Board based its decision on this ground rather than the invalid ground." See also *Shepherd* v. *United States,* 217 F. 2d 942 (9 Cir. 1954), rehearing

den., 220 F. 2d 855 (1955); and *Ypparila* v. *United States*, 219 F. 2d 465 (10 Cir. 1954). We do not read *Sovich* v. *Esperdy*, 319 F. 2d 21 (2 Cir. 1963), cited by the Government, as deciding anything to the contrary since in that case the Regional Commissioner expressly concurred in the erroneously reasoned opinion of the Special Inquiry Officer.

Since Jakobson's classification may have rested on an erroneous ground, his conviction cannot stand. We see no principle that would prevent our reversing for a new trial in which, if the Government chose, it could endeavor to prove from the mouths of members of the Appeal Board that they considered Jakobson to have been insincere. See *United States* v. *Balogh*, 157 F. 2d 939, 944 (2 Cir. 1946), judgment vacated on other grounds, 329 U.S. 692 (1947); *United States ex rel. Reel* v. *Badt*, *supra*, 141 F. 2d 845 (2 Cir. 1944). But because we are dealing here with action taken by the Appeal Board five years ago, we think it more "just under the circumstances," 28 U.S.C. § 2106, to direct dismissal of the indictment, as was done in *Batelaan* v. *United States*, 217 F. 2d 946, 947 n. 1 (9 Cir. 1954); *Shepherd* v. *United States*, *supra*, 217 F. 2d 942; *Ypparila* v. *United States*, *supra*, 219 F. 2d 465; and *United States* v. *Erikson*, *supra*, 149 F. Supp. 576, without prejudice to such new proceedings for Jakobson's induction, if any, as the Selective Service System may think it wise to undertake.

Reversed.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-second day of November one thousand nine hundred and sixty-three.

Present:

Hon. J. EDWARD LUMBARD,
Chief Judge.
Hon. HENRY J. FRIENDLY,
Hon. J. JOSEPH SMITH,
Circuit Judges.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

ARNO SASCHA JAKOBSON, DEFENDANT-APPELLANT

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judg-

ment of said District Court be and it hereby is reversed and that the action be and it hereby is remanded with direction to dismiss the indictment in accordance with the opinion of this court.

A. DANIEL FUSARO,
Clerk.

U.S. GOVERNMENT PRINTING OFFICE: 1964

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
Discussion	7
Conclusion	9

CITATIONS

Cases:

United States v. *Jakobson*, No. 937, this Term	7, 8
United States v. *Seeger*, No. 936, this Term	7, 8, 9

Statute:

Universal Military Training and Service Act, 62 Stat. 612–613, 50 U.S.C. 6(j)	2

725-735—64

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 787

FOREST BRITT PETER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 324 F. 2d 173.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 1963. A petition for rehearing was denied on December 10, 1963. Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including January 24, 1963, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the provision in Section 6(j) of the Universal Military Training and Service Act which makes belief in a Supreme Being a condition for qualification as a conscientious objector violates the First and Fifth Amendments to the United States Constitution.

2. Whether petitioner qualifies as a conscientious objector under Section 6(j).

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides, in pertinent part:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

STATEMENT

Petitioner was convicted in the United States District Court for the Northern District of California, sitting without a jury, of failure to submit to induction into the armed forces and was sentenced to six months' imprisonment.

Petitioner initially registered for the selective service system on July 10, 1956 (R. 2).[1] On May 29, 1957, while he was a student at Reed College, he filed the standard classification questionnaire with his local board (R. 5). With the questionnaire petitioner submitted a portion of a poem expressing opposition to war and stated that he agreed with the poem's sentiments, but he did not claim exemption as a conscientious objector (R. 16).

In February 1958, petitioner withdrew from Reed College and took up residence in San Francisco, California (R. 43, 44). In March 1958, petitioner filed the conscientious objector form and requested classification as a conscientious objector (R. 17, 18). In answer to the question, "Do you believe in a Supreme Being," petitioner wrote, "It depends on the definition" (R. 18). He appended the following explanation (R 20):

> Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.
>
> I consider this belief to be superior to my obligation to the state.
>
> In so far as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the conscious-

[1] "R." refers to petitioner's selective service file, which comprises the bulk of the record. "Tr." refers to the transcript of petitioner's trial, which is also part of the record.

> ness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands * * * (it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

Petitioner further stated (R. 20):

> I would say that the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic american culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups.
>
> The use of violence (physical force) comprises the ends one seeks in action. I consider war to be the greatest example of this. The use of non-violence in the freeing of India and the Montgomery bus strike is an example of the kind of force I do believe in.

The local board rejected petitioner's application for classification as a conscientious objector and classified him 1–A (R. 12). Petitioner thereupon requested a hearing (R. 27), and in connection therewith he submitted a further statement outlining his views on the nature of God.[2]

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[2] "All real living is meeting—Martin Buber.

"I have this God inside of me. To be truthful, I don't know if it's a long or short God or even a Superior God (much less a Supreme Being) and I have no idea what its sex is. I'm even worried about calling it God. After all a great deal of death has been done in the name of God.

At the hearing petitioner told the board that "he did not belong to any church or religion," and that "he has been influenced by books he has read and has formed his own personal reasons for opposing war" (R. 32). Following the hearing, the board affirmed petitioner's classification (R. 12), and petitioner's file was forwarded to the Selective Service Appeal Board (R. 34), which "tentatively determined that the registrant should not be classified in Class I–O or in a lower class" (R. 12).

After a hearing before a Department of Justice hearing officer (R. 40), prior to which petitioner had submitted further statements explaining the nature of his beliefs concerning war (R. 57–60), the Department of Justice recommended that petitioner's claim not be sustained (R. 42). The basis of the officer's finding was that petitioner "evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act" (R. 42).

On November 17, 1960, after affording petitioner an opportunity to respond to this recommendation (R. 61–73), the appeal board voted 5 to 0 to continue petitioner's 1–A classification (R. 78). Thereafter, petitioner was ordered to report for a pre-induction

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"This God, this God I have inside of me goes off every once in a while and opens me to the motions, to beauty and sadness in the universe. That is, now and again I feel the compulsion to meet the world around me. I'm filled with wonder, I'm possessed as it were, I feel so good I think I'm crazy. So my God isn't beyond me, it's within me and opens me to Godliness in the word.

"I see an army over this world of wonder. Such stupidity and wasted energy. It's liable to kill us all." (R. 31)

physical examination (R. 84). He did not report, informing the local board by mail that he would not do so in accordance with his "previously stated views and beliefs as a conscientious objector" (R. 82), and again enclosing the poetic fragment attached to his first classification questionnaire (R. 83, 84).

On October 13, 1961, petitioner was ordered to report for induction as a delinquent (R. 87). On the advice of counsel, he reported at the induction center but refused to be processed for induction (R. 89–91).

At his trial petitioner explained the basis for his claim as a conscientious objector as follows (Tr. 28):

> I think that my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of them, the essence being alive, and my respecting and loving this livingness in other objects and human beings * * * I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.

He said he had acquired these beliefs, "through my reading, association with other people, and living in the world," and that his reading had included Eastern philosophies, Confucius, Buddhist teachings, Christian mystics, Ralph Waldo Emerson, Whitman, Thoreau, and others (Tr. 26). The district court found petitioner guilty (Tr. 35).

On appeal from his conviction, petitioner did not question the constitutionality of Section 6(j). He

contended that he came within the statutory definition of a conscientious objector. The court of appeals found "there was ample basis" (Pet. App. 9) for the determination of the local and appeal boards that petitioner's beliefs did not meet the statutory standards fixed by Section 6(j), and it affirmed the conviction.

DISCUSSION

1. In *United States* v. *Seeger,* No. 936, this Term, we are seeking review of a decision by the Second Circuit that the statutory requirement of belief in a Supreme Being, as a condition for exemption from military service as a conscientious objector, discriminates among religious beliefs in violation of the Fifth Amendment. Since the constitutionality of this provision was firmly established in the Ninth Circuit before this case arose (see authorities cited in our *Seeger* petition, at p. 8), it was not a litigated issue in the present case. However, the court of appeals' ruling that petitioner did not qualify as a conscientious objector because, *inter alia,* he had expressed no unequivocal belief in a Supreme Being presupposed the constitutionality of the challenged requirement.

That the Ninth Circuit might have ruled differently on the question of statutory application had it shared the Second Circuit's doubts regarding the constitutionality of the provision is indicated by the Second Circuit's decision in *United States* v. *Jakobson,* No. 937, this Term, in which we are also petitioning for certiorari. The *Jakobson* case involved a registrant whose views were substantially similar to those held by petitioner in this case. In order to avoid

constitutional doubts in the application of the statute, the Second Circuit construed Section 6(j) as to grant conscientious objector treatment to the registrant in *Jakobson* despite the uncommon nature of his belief in a Supreme Being and notwithstanding the absence of any "duties superior to those arising from any human relation" in his creed. In our view the problems of statutory construction posed by this case and by *Jakobson* are so interrelated with the constitutional issue presented by the *Seeger* decision that all three cases merit this Court's consideration.

2. The petition for a writ of certiorari also raises the question whether petitioner failed to exhaust his administrative remedies. This question was briefed by both sides in the court of appeals, but it was not reached by that court in view of its holding that petitioner did not qualify as a conscientious objector. The issue arises because petitioner apparently failed to submit to a physical examination at the induction center and previously refused to report for a pre-induction physical. The record is ambiguous, however, as to exactly what transpired at the center in connection with the examination.[3] In view of this ambiguity, the government does not intend to argue

[3] The Report of Medical Examination (R. 94–97) contains a few entries, presumably relating to petitioner's physical condition. The date originally set for petitioner's pre-induction physical examination—August 30, 1961—is crossed out on the Report and also on the accompanying Report of Medical History, and the date of induction—November 22—is substituted. Also, the word "INDUCTEE" is stamped over the notation "PIP",

in this case that petitioner failed to exhaust his administrative remedies.

CONCLUSION

For the reasons stated, the government concurs in the request that the petition for a writ of certiorari be granted on the first two questions presented by the petition if certiorari is granted in *United States* v. *Seeger*, No. 936, this Term.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
DAVID N. ELLENHORN,
Attorneys.

MARCH 1964.

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under the heading "Purpose of Examination" on both Reports.

Petitioner's Record of Induction (R. 92, 93) also contains an entry relating to medical data (R. 92).

After petitioner's file had been sent to the United States Attorney in San Francisco for prosecution (R. 91), petitioner wrote letters, on the advice of counsel, to his local board, the California State Headquarters, and General Hershey, requesting a physical examination, explicitly for the purpose of exhausting his administrative remedies (Ex. 2, 107, 112). These requests were denied (Ex. 2, 111, 114).

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IN THE

Supreme Court of the United States

October Term, 1964

No. 51

UNITED STATES OF AMERICA,

Petitioner,

v.

ARNO SASCHA JAKOBSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT

HERMAN ADLERSTEIN,
Counsel for Respondent.

INDEX

	PAGE
Questions Presented	1
Statute Involved	2
Statement	2
ARGUMENT:	
I. The decision below is clearly correct	6
II. This case is so different from the Seeger case that there is no good reason to grant certiorari or to join in these cases	8
III. There is no conflict of decision between the Circuit Courts of Appeal	10
Conclusion	12

Citations

CASES:

Berman v. U. S., 156 F. 2d 380, 9 Cir. 5, 7, 10

Macintosh v. U. S., 283 U. S. 631 7

Peter v. U. S., 324 F. 2d 173, 9 Cir. 10, 11

U. S. v. Seeger, 326 F. 2d 846, 2 Cir. 8, 9

STATUTES:

50 U. S. C. App. 456(j), Universal Military Training and Service Act, 62 Stat. 611 ..... 2, 7, 8, 9, 11

50 U. S. C. App. 451(c) 2

REGULATION:

32 C. F. R. 1626.25 4

IN THE

Supreme Court of the United States

October Term, 1963

No. 937

UNITED STATES OF AMERICA,

Petitioner,

v.

ARNO SASCHA JAKOBSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT

Questions Presented

1. Whether the recommendation of the Department of Justice to the Appeal Board, that respondent was not opposed to participation in war by reason of religious training and belief, but that his claim was based on a personal moral code, was erroneous as a matter of law.

2. Whether respondent qualified as a conscientious objector under the definition given in Section 6(j) of the Universal Military Training and Service Act, and whether Section 1(c) of the Act should be used in connection with such definition.

3. Whether the 1-A classification was without basis in fact.

4. Whether Section 6(j) is constitutional, if the definition of a conscientious objector meant to exclude from recognition the views stated by respondent in his claim for conscientious objector status.

Statute Involved

Section 1(c) of the Universal Military Training and Service Act, 50 U. S. C. App. 451(c) provides:

> "The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy".

The pertinent provisions of Section 6(j) of the Universal Military Training and Service Act, 50 U. S. C. App. 456(j), are set forth in the Petition at page 2.

Statement

Respondent registered with his local board on September 2, 1953 at the age of 18 years and filed Selective Service Questionnaire, Form 100 (GX 3), the same day. Not being a conscientious objector at that time, respondent did not sign Series 14 which is a paragraph allowing statement of a conscientious objector claim. Respondent noted in Series 15, that he had a physical disqualification resulting from a back injury (GX 3p 10). Respondent was classified in 1-A on September 17, 1953 (GX 2), 2-S on March 31, 1955, 1-A in July 1955, 2-S on September 8, 1955 and 1-A on February 9, 1956, after he had left school (GX 2, 16). On February 27, 1958 respondent was found acceptable for military service, and his local board notified him to that effect on March 26, 1958 (GX 3 p11) (Page 3 of the Petition mistakenly states the notice was given

April 18, 1958.) Medical certificates concerning respondent's back condition were sent to the local board (GX 4-6, 18), and the army processing documents recited respondent's back condition (GX 19).

On April 18, 1958, respondent requested Form 150 for the first time (GX 21). The Department of Justice erroneously said respondent had requested said form 150 on the date of notification of selection for induction (GX 40 p3), and this is where Petitioner got the wrong date mentioned above. About six months before the local board ordered respondent for a pre-induction physical examination, he asked the clerk of the local board what was necessary for one to be recognized as a conscientious objector: She replied one had to have a long and overtly provable pacifist background, and had to have letters from ministers (GX 45 p4(2)). She added, that to qualify one must belong to one of several accepted pacifist religions and must submit proof that he had belonged to such a religion a long time (21a). For that reason, respondent made no further inquiry regarding his conscientious objector claim, until after he had passed the physical examination. On further inquiry, a Quaker organization informed respondent, that he had a valid conscientious objector claim, and he filed it.

Respondent subjoined to Form 150 an extended explanation of his views (GX 24). In it, respondent said he believed in a Supreme Being. He said the Supreme Being is higher than man or the Creator of Man, that he knows nothing of the nature of the Supreme Reality (Supreme Being) other than the fact that such Reality does exist. He knows this existence through faith. Since respondent doesn't know the nature of the Supreme Being or Reality, his religious quest lies in seeking knowledge about man who was created by the Supreme Reality, and in searching for moral standards which his divinely-given reason can accept. He says man must be spiritual, and that he is partly akin to the Supreme Reality. It is this

belief that causes him to ascribe dignity and worth to each individual. He said Life represents all that man is ever given in an ultimate sense, all else is arranged and created by man. Life is sacred and higher than all other values, and no man ought wilfully sacrifice another's life. His conscientious objections are based on these convictions (GX 24 Ser. II).

Respondent read books of Remarque, Koestler, Fromm, Dostoevski, and the well-known religious leaders, Tolstoi and Gandhi.

Although respondent had requested deferment from combatant service in Form 150, at his hearing before the local board on December 9, 1958 he offered a 43 page statement expanding his conscientious objector views and saying he could no longer accept non-combatant service (GX 31, 32). Respondent refers to Godness in this 43 page statement, but the general import of that word is that it is a quality of the Supreme Being.

After the hearing, the local board found respondent sincere, made a finding that the claim wasn't based on religious training and belief, because it was based essentially on a sociological or philosophical view or at most on a merely personal moral code (GX 33), and it classified respondent in 1-A-O for non-combatant service. In a summary of the local board hearing, the government appeal agent said: "The members of the Board were satisfied that he was honestly and properly a case for 1-A-O * * *" (GX 35).

Form 150 (GX 24), respondent's 43 page statement (GX 32) and the Exhibit I before the hearing officer on appeal showed respondent's belief in a Supreme Being. The District Court, in its opinion, referred to respondent not belonging to a sect (45a) and there was a like reference on sentencing (34a). The Appeal Board made a preliminary finding on May 4, 1959 under 32 CFR 1626.25

that "It has specifically considered the registrant's claim for deferment based on his religious training and belief and finds no merit in the registrant's appeal on that ground" (GX 38). It then sent the case to the Department of Justice for investigation and hearing. The FBI report was all favorable to the CO claim (GX 41). One reference believed registrant to be of a religious nature (GX 41 p2), while another reference said registrant has said: "All religion should object to war and killing" (GX 41, p3). After a hearing, the hearing officer reported respondent wasn't opposed to participation in combatant or non combatant military training and service by reason of his religious training and belief, but that his claim was based on a personal moral code. It also said he wasn't sincere in his claim. The Department of Justice recommended that the claim be not sustained (GX 40). A copy of the recommendation was sent to respondent and he replied (GX 45) stating he was sincere and had a religious position. The appeal board classified respondent in 1-A (GX 46) and the Director of Selective Service refused to take further action (GX 47). The Court below would have found respondent sincere in his claim, if it had to decide that originally, but held it was for the Board to decide (Pn 15).[1]

The opinion of the Court below referred to *Berman* v. *U. S.*, 156 F. 2d 380, 9 Cir. (Pn 21). The 1948 Act and amendments of it adopted the interpretation of religious training and belief, as stated in the *Berman* case. The Court below showed the Court which decided *Berman* would have recognized respondent's CO claim. It said: "We are by no means certain that the Court that rejected *Berman's* claim because his evidence showed no belief in a 'supreme power' of any kind would have rejected Jakobson's" (Pn 21). As a second reason, it added there was need to read the statute broadly because of the Constitu-

[1] Pn refers to the Petition for Certiorari.

tional question. The Court below equated respondent's beliefs with those of Prof. Paul Tillich (Pn 21-23). Note 6 of the opinion below says respondent comes closer to a traditional reading of "Supreme Being" than Tillich in one respect, namely, his acceptance of the notion of an original creator and Supreme existence. The opinion also said: "For we rule it an erroneous construction of the statute to conclude that Jakobson's beliefs fell outside its definition of religion" (Pn 15).

ARGUMENT

I.

The decision below is clearly correct.

The Court below found respondent believed in a Supreme Being (Pn 13). At the hearing before the local board, respondent said even noncombatant service would result in "too many situations and relationships that would be a strain on my conscience * * *" (Pn 13). The Court below wrote "For we rule it an erroneous construction of the statute to conclude that Jakobson's beliefs fell outside its definition of religion" (Pn 15). This decision was correct in view of the Court's findings of Jakobson's belief in a creator or ultimate cause and his belief in a horizontal relationship with God which requires direct dealing with life, death, health, love, time—the "givens" of existence (Pn 16). Thus we have duties arising through a relationship to God and superior to those arising from a human relation. Jakobson adopts the position of Acceptance, which sees in all humanity "Godness"—the quality of having been created by the Ultimate Cause. The taking of human life is incompatible with Acceptance of the world and life (Pn 17). Here again is a superior duty. The Court below called the definition of 'religious training and belief' somewhat unusual for a statute (Pn

17), and it quoted Chief Justice Hughes' statement of religion as given in *Berman* v. *U. S.*, 156 F. 2d 377 which also said: "philosophy and morals and social policy without the concept of Deity cannot be said to be religion in the sense of that term as it is used in the statute". Justice Hughes' definition of religion and the *Berman* rejection of philosophy, etc. plus the concept of Deity were incorporated in the 1948 Act (Pn 19). There is implicit in the *Berman* holding that philosophy, morals and social policy with the concept of Deity are religion within the Act. In other words, beliefs without a concept of Deity are not considered religious, while beliefs with such a concept are. The Act itself shows that, because *section 6(j)* says religious training and belief do not include "essentially" political, sociological, or philosophical views or a "merely" personal moral code. (Quotes by undersigned.) The words "essentially" and "merely" are used to denote there is no concept of Deity behind the views or code. There could have been no other reason to use these words.

The Court below said the statute doesn't require belief in an anthropomorphic Deity, breathing over the face of the waters. It added the *Berman* case 156 F. 2d at p. 380 asked only that one asserting religious belief should not 'assign all beyond (our logical equations) as a great vacancy' but should entertain a belief "going beyond the physical revelations of life", and that *Macintosh* v. *U. S.*, 283 U. S. at p. 631 said "our regard from the beginning for freedom of conscience", * * * was not intended to define "religion" or "God" in any narrow sense". The Court thought Jakobson's beliefs fit within the *Berman* definition of religion, for it said it wasn't certain that the Court that rejected Berman's claim because his evidence showed no belief in "a supreme power" of any kind would have rejected Jakobson's claim (Pn 21). It is clear from these statements, that the Court below construed Jakobson's beliefs as coming within *section 6(j)* without re-

gard to any constitutional question. The constitutional confrontment was added as a second reason.

The Court below equated respondent's beliefs with those of the great theologian, Paul Tillich, some of whose views were adopted by the Bishop of Woolwich (Pn 21-23). These views certainly belong within the definition of *sec. 6(j)*. It was in view of the resemblance of respondent's religion to that of Tillich, that the Court thought it would possibly infringe the Constitution, to hold that such a religion would not be recognized over against the well-known religions. If Congress meant to exclude Tillich's religion (this would include Jakobson's) it would then be preferring well-known religions over the religion of an outstanding theologian whose views were accepted by many people throughout the world. This would infringe the Constitution. While all this is so, the Court had found enough in Jakobson's religion to qualify it for recognition under *sec. 6(j)*. (Pn 21), even without taking into account the grave constitutional question.

II.

This case is so different from the *Seeger* case that there is no good reason to grant certiorari or to join these cases.

The principle decided in *U. S.* v. *Seeger*, 326 F. 2d 846 2 Cir. was that inclusion of the definition of religious training and belief in *sec. 6(j)*, so as to require belief in a Supreme Being, made unconstitutional so much of the Act (SPn 6).[2] That principle has no relation to the point decided at bar, because respondent believed in a Supreme Being and raised no question regarding this belief, except that his belief came within the meaning of the statute. In fact, Jakobson said he had religious training and belief, because he believed in a Supreme Being. As a sec-

[2] SPn refers to the Petition in the *Seeger* case.

ond ground, the Court below held the Statute might be unconstitutional, if it meant to exclude views of Jakobson and Tillich (Pn 23). Note 6 of the opinion below (Pn 23) says Jakobson came closer to a traditional reading of Supreme Being than Tillich, thus showing the Court had found Jakobson believed in a Supreme Being. Unconstitutionality might result in giving preference to other religions with beliefs in a Supreme Being. This was different from *Seeger* which held the Supreme Being clause had no place in the Act (SPn 27).

While respondent agrees with the decision in *Seeger*, it doesn't follow that these cases should be joined, or that certiorari should be granted here.

There is no question of the permissible scope of Congress' power to deal with persons under *sec. 6(j)* here. The question is whether Jakobson met the requirement of belief in a Supreme Being, and this was a question on interpretation of the Act, which the Court below correctly decided.

Seeger refused to answer categorically, whether or not he believed in a Supreme Being (SPn 4); his beliefs were based on his rational decision that war is undesirable (SPn 9). The Court below in *Seeger* told why he was denied CO recognition: "It is immediately apparent from a reading of the Department's report that its decision rested entirely on the finding that Seeger's objections, however sincere, were not based upon 'a belief in a relation to a Supreme Being', as required by *sec. 6(j)* of the Act" (SPn 17). Also, in *Seeger*, the Government had argued in the Court of Appeals, that Congress was seeking to "give the greatest possible latitude in the free exercise of religion when it enacted the conscientious objector provisions; since the Constitution does not require that a similar freedom be afforded the exercise of nonreligious beliefs, it is reasonable to distinguish between them" (SPn 23). Thus the government in the *Seeger* case was arguing in favor of Jakobson and against *Seeger*, and this

makes clear that the two cases do not belong together, and that the granting of certiorari in *Seeger* does not require like consideration in *Jakobson*.

III.

There is no conflict of decision between the Circuit Courts of Appeal.

The Government is in error in asserting, that in *Peter* v. *U. S.*, 324 F. 2d 173, the 9th Circuit sustained denial of an exemption to a registrant whose beliefs were substantially similar to those of respondent here. The reason for the error is that the requirement of belief in a Supreme Being was not met by Peter, while it was met by Jakobson. Therein lies the vast difference in the cases. Both Peter and Jakobson were against participation in war, but Peter's objection wasn't grounded within the terms of the statute. This is made clear in the opinion in *Peter* v. *U. S.*, 324 F. 2d 173 at p. 177, where the 9th Circuit said:

> "It is significant that nowhere in the record of the proceedings before the administrative bodies did appellant manifest clearly and unequivocally a belief in a Supreme Being to Whom he owed obedience. When asked directly, 'Do you believe in a Supreme Being?' he answered, 'It depends on the definition * * *'"

The Court then goes on to show, that Peter's position was similar to that of *Berman* in *Berman* v. *U. S.*, 156 F. 2d 381, 9 Cir. in that his philosophy, morals and social policy without the concept of Deity cannot be said to be religion in the sense of that term, as it is used in the Statute. In other words, had Peter believed in a Deity, his position of conscientious objection would have been recognized. As the Court below at bar said: "We are by no means certain that the Court that rejected Berman's claim because his evidence showed no belief in 'a supreme power' of any kind would have rejected Jakobson's" (Pn 21).

This points out the distinction between Jakobson and Berman with Peter. The Court below pointed out, that Jakobson was unlike Berman, while the 9th Cir. which decided Berman indicated, that Peter was like Berman. It follows that the Government can't be right in maintaining, that the beliefs of Jakobson and Peter were substantially alike.

No stretching of the language of *sec. 6(j)* is necessary to bring Jakobson's beliefs within its definition. Since Jakobson believed in a Supreme Being, his conscientious objector claim naturally falls within the definition of conscientious objector, as intended by Congress. As for Peter, the hearing officer reported, that he told him that belief in a Supreme Being was required, and at no time did Peter suggest that he had a belief in a Supreme Being. *Peter* v. *U. S.*, 324 F. 2d 173 at p. 175, note 3. See also the Court's statement on this at pages 176 and 177 of the *Peter* case.

The "Memorandum for the United States" in the *Peter* case at page 8 says Jakobson had an uncommon belief in a Supreme Being and there was an absence of any "duties superior to those arising from any human relation" in his creed. Both of these statements are in error. Jakobson's beliefs were grounded in a Supreme Being whom he called the Supreme Reality and Who created man (GX 24 Ser. II). He also said man was spiritual and was akin to the Supreme Reality. The fact is that respondent said he did believe in a Supreme Being. He then said he called the Supreme Being a Supreme Reality Who created man. To say that the change of use of the terms Being and Reality, under these circumstances, made the meaning different is to trifle with words. The Bible says God created man in his own image. That is just what respondent has said. There is nothing uncommon in such a belief. It was Jakobson's belief that certain things such as "life" were given by the Supreme Reality, while other things were created by man. He says life is fundamental to everything that has to do with

health, love and reason, and that life is sacred. No man ought wilfully to take another's life, and this attitude stems from his most sacred convictions. His conscientious objections are based on these convictions (GX 24 Ser. II pp. 2, 3). Such beliefs stem from Jakobson's belief in God's creation of life and life's sacredness. They prevent him from taking life. They do show superior duties to those arising from any human relation. In addition, Jakobson believed in a horizontal transcendental relation to the Supreme Reality, and this caused him to say: "And a man who says: 'I will not allow myself to be inducted into the armed services because of the way I feel about human life * * * etc.', is relating more closely to Godness than a man who says: 'I wonder if they'll send me overseas: I always did want to travel * * *.'" (GX 32, p. 12). Here we have a clear picture of refraining from military service because of Godness. This is a duty higher or superior to those arising from any human relation. Many more superior duties are shown in Form 150 (GX 24), and the 43 page statement (GX 32). See also the reference in the opinion below as to respondent's acceptance of the order of the universe, and that taking human life is incompatible with acceptance which sees in all humanity Godness—the quality of having been created by the Ultimate Cause (Pn 16, 17). This shows respondent's superior duties to his Creator not to take human life, because he had accepted the Creator's order of the universe.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a Writ of Certiorari should be denied.

Dated, April 9, 1964.

HERMAN ADLERSTEIN,
Counsel for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 50

UNITED STATES OF AMERICA,
Petitioner,

v.

DANIEL ANDREW SEEGER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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INDEX TO BRIEF

	PAGE
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of the Case	4
Discussion	8
Conclusion	12

Table of Cases

Abington School District v. *Schempp*, 374 U. S. 203 (1963) 9, 12

Berman v. *United States*, 156 F. 2d 377 (9 Cir., 1946), cert. den. 329 U. S. 795 11

Bolling v. *Sharpe*, 347 U. S. 497, 499 (1954) 10, 11

Cantwell v. *Connecticut*, 310 U. S. 296 (1940) 10

Clark v. *United States*, 236 F. 2d 13 (9 Cir., 1956), cert. den. 352 U. S. 882 12

Engel v. *Vitale*, 370 U. S. 421 (1962) 9

Etcheverry v. *United States*, 320 F. 2d 873 (9 Cir., 1963), cert. den. 344 U. S. 843 12

Everson v. *Board of Education*, 330 U. S. 1 (1947) 9

Fellowship of Humanity v. *County of Alameda*, 315 P. 2d 394 (1957) 10

George v. *United States*, 196 F. 2d 445 (9 Cir., 1952), cert. den. 344 U. S. 843 ..... 11, 12

Illinois ex rel. McCollum v. *Board of Education*, 333 U. S. 203 (1948) 9

PAGE

McGowan v. *Maryland*, 366 U. S. 420 (1961) 9

Sherbert v. *Verner*, 374 U. S. 398 (1963) 10

Speiser v. *Randall*, 357 U. S. 513 (1958) 10

Torcaso v. *Watkins*, 367 U. S. 488 (1961) 9, 12

United States ex rel. Reel v. *Badt*, 141 F. 2d 845 (2nd Cir., 1944) 7, 8, 11

United States v. *Ballard*, 322 U. S. 78 (1944) 10

United States v. *DeLime*, 223 F. 2d 96 (3 Cir., 1955) 12

United States ex rel. Phillips v. *Downer*, 135 F. 2d 521 (2 Cir., 1943) 7, 8, 11

United States v. *Kauten*, 133 F. 2d 703 (2 Cir., 1943) 7, 8, 11

Washington Ethical Society v. *District of Columbia*, 249 F. 2d 127 (1957) 10

West Virginia Board of Education v. *Barnette*, 319 U. S. 624 (1943) 10

Statutes

PAGE

U. S. Constitution:

Amendment I 2, 3, 7, 9, 10, 11

Amendment V 2, 3, 7, 10

Universal Military Training and Service Act:

§6(j), Title 50 App., U. S. C. A., §456(j) 2, 3, 4, 8, 9, 10

Title 50 App., U. S. C. A., §462 2

Selective Training and Service Act of 1940:

54 Stat. 885 (1940); Section 5(g) (50 U. S. C. A. App. §305(g)) 4, 11

Selective Service Act of 1948:

§6(j), 62 Stat. 604, 612-13 (1948) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 936

UNITED STATES OF AMERICA,

Petitioner

v.

DANIEL ANDREW SEEGER,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

This brief is submitted in response to the petition of the United States for a writ of certiorari to review the judgment, dated January 20, 1964, of the United States Court of Appeals, Second Circuit (Pet. App. C., p. 43) unanimously reversing the judgment (R. 4a-5a)* of the United States District Court for the Southern District of New York which had found respondent guilty, and convicted him,

* The reference "R" is to the Appendices attached to Seeger's appellant's brief and reply brief in the Court of Appeals; and the reference "GX" is to the Government's Exhibits.

of the offense of a registrant under the Universal Military Training and Service Act, unlawfully and knowingly failing, neglecting and refusing to perform a duty required of him under and in execution of said Act, and the rules, regulations and directives made pursuant thereto, to wit, to submit to induction at the time and place fixed in an Order to Report for Induction mailed to him by his Selective Service System Local Board (Title 50, App. §462, U. S. Code) and committing him to the custody of the Attorney General for imprisonment for a period of one year and one day.

Opinions Below

The opinions of the Court of Appeals and of the District Court, respectively, are annexed to the Petition (Pet. App. A., pp. 11-28 and App. B., pp. 29-41) and are officially reported at 326 F. 2d 846 and 216 F. Supp 516.

Jurisdiction

Petitioner's statement of jurisdiction is accepted.

Questions Presented

1. Is Section 6(j) of the Universal Military Training and Service Act (50 U.S.C.A., App. §456(j)), as amended by Congress in 1948 by the insertion of the "Supreme Being" provision, invalid, as in violation of the "Establishment of Religion" and "Free Exercise of Religion" clauses of the First Amendment of the United States Constitution and, also, of the "Due Process" clause of the Fifth Amendment thereof?

2. Whether, in granting an exemption from combatant training and service in the armed forces of the United

States to any person "who by reason of religious training and belief is opposed to participation in war in any form", Congress could, constitutionally, require as a condition of such exemption, that such person's religious training and belief must be a "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation * * *"?

3. Was not the decision and judgment of the Court of Appeals herein correct, in reversing the judgment of the District Court and in deciding that Section 6(j) of the Universal Military Training and Service Act (50 U.S.C.A., App. §456(j)) violates the First and Fifth Amendments of the United States Constitution, that respondent was improperly convicted of violating said Act and that respondent is entitled to exemption as a concientious objector under Section 6(j) of said Act?

Statute Involved

The statute involved is Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C.A., App. §456(j), as amended, which, so far as relevant, provides:

> "Nothing contained in this title [sections 451-454 and 455-471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. *Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal code.* * * *" (Italics supplied.)

The above italicized portion of present Section 6(j) was first brought into the statute by the enactment of Section 6(j) of the 1948 Selective Service Act (62 Stat. 604, 612-13 (1948)), which amended the 1940 Selective Training and Service Act. (See Section 5(g) of the Selective Training and Service Act of 1940 (50 U.S.C.A. App. §305(g)); 54 Stat. 885 (1940).)

Statement of the Case

Petitioner's statement of the case (Pet. pp. 3-6) is not deemed adequate.

Respondent registered with his local draft board upon becoming 18 years old in September 1953. He was then a college student (GXs 1, 3). He did not then claim exemption as a conscientious objector, but asked deferment as a student (GXs 3, 4, 5, 6, 7). He was initially classified 1-A but later was reclassified 2-S.

By letter to said board dated July 12, 1957, he first claimed exemption as a conscientious objector (GX 11); and thereafter filled out and filed the requisite form (SSS Form No. 150; GXs 12, 13). Therein, (GX 13) he executed the "Series I—Claim for Exemption", as follows:

> "(B) I am, by reason of my 'religious' belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both "combatant and noncombatant training and service in the Armed Forces."

His answers to the questions in "Series II—Religious Training and Beliefs", were: As to question "1", "Do you believe in a Supreme Being?", defendant did not check the "Yes" or "No" boxes but added and checked a new, third box with the notation: "Please see attached sheet."

As to question "2", "Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation", he answered: "Please see attached sheet".

In the attached sheets, in answer to question "1", concerning his belief in a Supreme Being, he stated in part:

> "Of course, the existence of God cannot be proven or disproven, and the essence of his nature cannot be determined. I prefer to admit this and leave the question open rather than answer 'yes' or 'no'.
>
> "However, skepticism or disbelief in the existence of God does not necessarily mean lack of faith in anything whatsoever."

In answer to question "3", "Explain how, when and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above", he wrote: "Please see attached sheet". On the attached sheet he listed various of his readings, among others, those of religious writers, and publications of the American Friends Service Committee (a Quaker organization).

In answer to question "4", "Give the name and present address of the individual upon whom you rely most for religious guidance," he wrote: "Please see attached sheet." On the attached sheet he stated:

> "I rely on no particular person for religious guidance. I resolve spiritual and ethical problems by reading relevant essays or books, by discussion and debate with colleagues, and ultimately, by following the dictates of my conscience."

Thereafter, Seeger was reclassified as 1-A and ordered to report for a pre-induction physical examination (GX 17). Notwithstanding his personal appearance before it, the local board voted to continue his 1-A classification (GXs 18, 19), whereupon Seeger appealed to the Appeal Board, on the ground he was entitled to exemption as a conscientious objector (GXs 20, 21, 23, 24).

The Appeal Board forwarded his file to the Department of Justice for an advisory opinion (GX 26). The F.B.I. conducted an investigation of him, which resulted in a most favorable report (GX 27(a), (b), (c) and 30(b); R. pp. 16a-21a).

He then had a hearing before the Hearing Officer (GXs 27(a), (b), (c), (d), who, later, filed a report attesting to his complete sincerity and good faith and recommending that his appeal be sustained (GX 30(a); R. pp. 9a-12a). However, the Department of Justice reached an opposite conclusion and recommended that his claim as a conscientious objector be denied because it was not based upon a religious training and belief in relation to a Supreme Being (GX 30(a); R. pp. 8a-16a).

The Appeal Board then voted to classify him as 1-A (GXs 34, 35); as, later, did the Presidential Appeal Board (GXs 47, 48, 49, 50).

He was then ordered to report for induction (GX 51). He did so, but failed to submit to induction (GXs 52, 53a) claiming he had erroneously been denied exemption as a conscientious objector (GX 61).

Two years later he was indicted (R. pp. 6a-7a). He pleaded "not guilty", waived a jury trial and was tried before District Judge Levet who found him "guilty" and sentenced him to imprisonment for a year and a day (R. pp. 1a, 4a, 5a, 24a-37a; Pet. App. B, pp. 29-41). The District Court held that the statute, inherently and as

applied against Seeger, was constitutional under the First and Fifth Amendments of the United States Constitution.

The Court of Appeals reversed (Pet. App. A, pp. 11-28), holding the statute to be unconstitutional.

The petition (pp. 3-5, 9) fails to make it clear that Seeger's claim of exemption as a conscientious objector arose by reason of religious training and belief, albeit not a belief in a relation to a Supreme Being.

As the record below shows, Seeger was denied exemption as a conscientious objector solely because his religious training and belief was not the type of religious training and belief defined in the present statute, i.e., one related to a Supreme Being. Nowhere in the prior proceedings is there any finding or holding that Seeger's conscientious objection was based on political, sociological or philosophical views or merely a personal moral code, rather than a religious training and belief (cf. Pet. pp. 3-5, 9).

As pointed out by the Court of Appeals (Pet. App. A. p. 26):

> "With commendable candor, the Government has fully conceded that Seeger's views fall squarely within the definition of 'religion' announced for this Circuit in *Kauten*, and subsequently reaffirmed in *Phillips and Reel*."*

To the same effect, see statement at page 12 of Appendix A.

The decision of the District Court (Pet. App. B at p. 36) recognized and was predicated on the fact, proved by stipulation, "that the grounds on which defendant claimed exemption are religious and arise from religious training

* *United States* v. *Kauten*, 133 F. 2d 703 (2d Cir. 1943); *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521 (2d Cir. 1943); *United States ex rel. Reel* v. *Badt*, 141 F. 2d 845 (2d Cir. 1944).

and belief by reason of which defendant is conscientiously opposed to participation in war" and "fall within the definitions of religion as set forth in the following cases, determined by the Second Circuit Court of Appeals" (i.e. the *Kauten, Phillips* and *Reel* cases, *supra*).

The Government conceded, on the trial and in its trial brief (R. pp. 22a-23a, 1b-5b) that Seeger's belief on which he based his conscientious objection and claimed exemption is religious and arises from a religious training and belief, at least within the definition of "religion" set forth in the *Kauten, Phillips* and *Reel* cases, and that he would have been entitled to exemption under the religious training and belief provision of the 1940 Draft Act, as construed by the Second Circuit Court of Appeals in those cases.

Furthermore, the Hearing Officer recommended exemption on the ground that Seeger's "conscientious objections are based upon his individual training and belief, both of which include research in religious and cultural fields" (R. p. 12a).

Finally, the recommendation of the Department of Justice was, "based upon the facts contained herein", that "the registrant has failed to make a claim within the meaning of Section 6(j) of the Act, since his objections are not based upon religious training and belief in relation to Supreme Being, as defined in said Act" (R. p. 15a).

Thus, concededly, Seeger's conscientious objection is based upon a religious training and belief, though that religious training and belief is not related to an affirmative belief in a Supreme Being.

Discussion

1. It is respondent's position that the Court of Appeals' decision is manifestly correct, in reversing the judgment of conviction and in holding Section 6(j) unconstitutional,

and should be affirmed if a review is granted by this Court.

Section 6(j) is violative of both the "Establishment Clause" and the "Free Exercise Clause" of the First Amendment.

In enacting that law, Congress has created a preference and an aid in favor of conscientious objectors whose objection is related to or based upon a belief in a Supreme Being, as against those conscientious objectors whose objection is related to or based upon some other type of religious training or belief.

Thus, Congress has passed a law and imposed a requirement which aids those religions based on a belief in the existence of God as against those religions founded on different beliefs. It has preferred one type of religion over another. It has aided religions as against non-believers. It has abandoned the "neutral" position in which the "Establishment" and "Free Exercise" clauses of the First Amendment places our Government. It has, in effect, established an official, state religion—one which is related to a belief in a Supreme Being—and it has placed the support of Government behind this particular religious belief. It has established by legislative fiat the religious orthodoxy of the "Supreme Being" religious belief. It denies exemption to, and discriminates and penalizes, a person because of his kind of religious belief.

Such a law is clearly unconstitutional under the Establishment Clause of the First Amendment. *Torcaso* v. *Watkins*, 367 U. S. 488 (1961); *Everson* v. *Board of Education*, 330 U. S. 1 (1947); *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203 (1948); *Abington School District* v. *Schempp*, 374 U. S. 203 (1963); *Engel* v. *Vitale*, 370 U. S. 421 (1962); *McGowan* v. *Maryland*, 366 U. S. 420 (1961).

Such a law also violates the Free Exercise Clause of the First Amendment. *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *United States* v. *Ballard*, 322 U. S. 78 (1944); *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624 (1943); *Sherbert* v. *Verner*, 374 U. S. 398 (1963).

Even assuming that draft exemption is a matter of grace or privilege, Congress cannot constitutionally pass a law, such as this, which, itself, grants or denies the privilege of exemption on a ground which is discriminatorily unconstitutional. *Speiser* v. *Randall*, 357 U. S. 513 (1958); *Sherbert* v. *Verner*, 374 U. S. 398 (1963). Cf. *Washington Ethical Society* v. *District of Columbia*, 249 F. 2d 127 (1957); *Fellowship of Humanity* v. *County of Alameda*, 315 P. 2d 394 (1957).

Section 6(j), also, is violative of the "due process clause" of the Fifth Amendment, which embodies the concept of equal protection of the laws.

The classification set up in Section 6(j) is arbitrary and discriminatory in that it permits the exemption from military service of a person whose religious training and belief is related to a Supreme Being but denies such exemption to a person whose religious training and belief is not so related.

Such a classification not only violates the First Amendment but, also, constitutes a denial of equal protection of the laws and due process of law under the Fifth Amendment. *Bolling* v. *Sharpe*, 347 U. S. 497, 499 (1954). As the Court of Appeals stated: "A line such as is drawn by the 'Supreme Being' requirement between different forms of religious expression cannot be permitted to stand consistently with the due process clause of the Fifth Amendment." (Pet. App. A. p. 27).

2. Respondent, however, recognizes that this case is one of first impression in this Court; that it squarely

presents the constitutional issues; and that it involves important questions of federal statutory and constitutional law, including the powers of Congress in granting or denying exemptions under the draft act. Respondent also realizes that it is important that the present draft act be uniformly administered throughout the country and that conflicts presently exist in the Circuits regarding the interpretation and constitutionality of Section 6(j) thereof, particularly the "Supreme Being" clause.

The Selective Service and Training Act of 1940 granted an exemption to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form" (54 Stat. 885, 889).

The Court of Appeals, Second Circuit, in the *Kauten*, *Phillips* and *Reel* cases, *supra*, decided thereunder, defined and interpreted "religious belief" broadly and held it error to deny exemption to a conscientious objector because his religious belief was not related to a Deity or Supreme Being. A conflicting result was reached by the Ninth Circuit Court of Appeals in *Berman* v. *United States*, 156 F. 2d 377 (9 Cir., 1946), cert. den. 329 U. S. 795, wherein, by a divided court, it was held such "religious belief" meant a belief in relation to a Deity or God.

As noted above (pp. 3-4), the conscientious objection provision of the 1940 Act was revised in 1948 by the addition of the "Supreme Being" clause, under which a conscientious objector is granted exemption only if his religious training and belief constitutes a belief in a relation to a Supreme Being.

Thereafter, the constitutionality of this new "Supreme Being" provision, under the First Amendment, was upheld by the Ninth Circuit in *George* v. *United States*, 196 F. 2d

445 (9 Cir., 1952), cert. den. 344 U. S. 843; in *Clark* v. *United States*, 236 F. 2d 13 (9 Cir., 1956), cert. den. 352 U. S. 882; and in *Etcheverry* v. *United States*, 320 F. 2d 873 (9 Cir., 1963), cert. den. 344 U. S. 843; and, by the Third Circuit, in *United States* v. *DeLime*, 223 F. 2d 96 (3 Cir., 1955).

All of these cases, except *Etcheverry*, were decided prior to *Torcaso* v. *Watkins*, 367 U. S. 488 (1961) wherein this Court first spelled out clearly the constitutional principle that Congress could not pass laws or impose requirements which aid those religions based on a belief in the existence of God as against those religions founded on different beliefs. The *Torcaso* decision was ignored by the Ninth Circuit in *Etcheverry*, even though the rule of *Torcaso* had been restated in *Abington School District* v. *Schempp*, 374 U. S. 203, 220 (1963).

These conflicts should be resolved by this Court.

Conclusion

Although it is respondent's position that the decision herein of the Second Circuit Court of Appeals is correct and should be affirmed in any event, he recognizes that sound reasons exist in this case for the granting of the Government's petition for a writ of certiorari and, accordingly, he does not oppose such petition.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 29

FOREST BRITT PETER, *Petitioner*

vs.

UNITED STATES

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Statute Involved	2
Questions Presented	2
Statement	2
A. Proceedings Before Petitioner's Local Draft Board and the Appeal Board	2
B. Proceedings Before the District Court	8
C. The Decision of the Court Below	10
Summary of Argument	11
Argument	12
Introduction—The Relation of This Case to Cases Nos. 50 and 51	12
I. Petitioner's Beliefs, as Presented in Support of His Claim for Classification as a Conscientious Objector, Satisfy the Requirements for Exemption Under Section 6(j) of the Act	16
A. The Ground for Petitioner's Opposition to Military Service Is a Belief in an Authority Beyond the Power of Man Which Forbids Such Service	16
B. The Supreme Being Requirement of Section 6(j) of the Act Is Satisfied by a Religious Belief Which Acknowledges the Existence of an Authority Beyond the Power of Man	19
II. Section 6(j) of the Act Is in Any Event Unconstitutional	23
Conclusion	29
Appendix	

CITATIONS

Cases	Pages
Abington School District v. Schempp, 374 U.S. 203	29
Berman v. United States, 156 F.2d 377 (C.A. 9), certiorari denied, 329 U.S. 795	10, 11, 19, 20, 21, 22
Everson v. Board of Education, 330 U.S. 1	29
Fellowship of Humanity v. County of Alameda, 153 C.A. 2d 673, 315 P.2d 394	25
Fowler v. Rhode Island, 345 U.S. 67	24, 29
Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203	29
Sherbert v. Verner, 374 U.S. 398	26, 29
Speiser v. Randall, 357 U.S. 513	24
Torcaso v. Watkins, 367 U.S. 488	14, 24, 25
United States v. Ballard, 322 U.S. 78	26, 29
United States v. Jakobson, 325 F.2d 409	12, 14, 15, 16, 18, 19, 20, 21, 22
United States v. Kauten, 133 F.2d 703	14, 20, 27
United States v. Macintosh, 283 U.S. 605	19
United States v. Rumley, 345 U.S. 42	21
United States v. Seeger, 326 F.2d 846	14, 15, 16, 23, 24, 26, 29
United States ex rel Phillips v. Downer, 135 F.2d 521 (C.A. 2)	20
United States ex rel Reel v. Badt, 141 F.2d 845 (C.A. 2)	20
Washington Ethical Society v. District of Columbia, 249 F.2d 127	25
Zorach v. Clauson, 343 U.S. 306	29

Statutes	
Selective Training and Service Act of 1940:	
54 Stat. 885 (1940)	23
Sub-Section 5(g)	19, 23

Pages

Universal Military Training and Service Act (62 Stat. 604 *et seq.* (1948), 50 U.S.C. App. 451 *et seq.* (1958)):
Section 6(j) 2, 5, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 23, 24, 27, 28, 29
Section 12(a) 8

MISCELLANEOUS

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 29

FOREST BRITT PETER, *Petitioner*

vs.

UNITED STATES

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Petitioner

OPINIONS BELOW

The opinion of the Court of Appeals (R. 88-96) is reported at 324 F.2d 173. The United States District Court for the Northern District of California, Southern Division, in entering its judgment of conviction from which appeal was taken to the court below (R. 4), did not issue an opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on October 30, 1963 (R. 96). A petition for rehearing was denied on December 10, 1963 (R. 97). The petition for writ of certiorari was filed on January 24, 1964, and was granted on May 4, 1964, (R. 99).

STATUTE INVOLVED

The pertinent provisions of the United States Constitution and the Universal Military Training and Service Act, hereafter called the Act (62 Stat. 604, *et seq.* (1948), 50 U.S.C. App. 451, *et seq.* (1958)), are set forth in the Appendix, *infra*.

QUESTIONS PRESENTED

1. Whether the exemption from military service for persons conscientiously opposed to service in the armed services, under Section 6(j) of the Universal Military Training and Service Act, requires belief in Deity.

2. Whether, if the answer to the first question presented is in the affirmative, Section 6(j) is unconstitutional under the First and Fifth Amendments to the United States Constitution.[1]

STATEMENT

A. Proceedings Before Petitioner's Local Draft Board and the Appeal Board

Petitioner registered with his Local Draft Board in Hayward, California, on July 10, 1956 (R. 13). Subsequently, petitioner completed and filed the standard classification form (R. 14-20). Although he did not claim exemption as a conscientious objector in this form, petitioner submitted with the completed form an excerpt from a poem opposing war, and expressed his concurrence with the thoughts it expressed (R. 23). Thereafter, on March 4, 1958, petitioner

1. A third question was presented in the Petition, relating to the exhaustion of administrative remedies by Petitioner. In its responsive memorandum, however, the Government states that it "does not intend to argue in this case that petitioner failed to exhaust his administrative remedies." (Memo, p. 9), and for that reason the question is not discussed in this brief.

requested his Local Board to furnish him a form to apply for classification as a conscientious objector, which he completed and returned to the Board on March 8, 1958 (R. 24, 25-29). Petitioner responded to the question on the form which inquired as to his belief in a Supreme Being by stating, "It depends on the definition," and referring to an attached page, where he wrote (R. 27):

> Since the human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.
>
> I consider this belief to be superior to my obligation to the state.
>
> Insofar as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands . . . [It] is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

The attached sheet also stated, in response to questions as to the sources of his belief and the circumstances under which he believed in the use of force (R. 27):

> I would say that the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic American culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups.

> The use of violence (physical force) comprises the ends one seeks in action. I consider war to be the greatest example of this. The use of non-violence in the freeing of India and the Montgomery bus strike is an example of the kind of force I do believe in.

The Local Draft Board rejected petitioner's application, and classified him as 1-A. Thereafter, petitioner requested a hearing before the Local Board "through which I may state my beliefs and present new evidence and information," which request was granted (R. 30, 31). In connection with the hearing, petitioner submitted the following written statement respecting his belief as to God (R. 33):

> "I have this God inside of me. To be truthful, I don't know if it's a long or short God or even a Superior God (much less a Supreme Being) and I have no idea what its sex is. I'm even worried about calling it God. After all a great deal of death has been done in the name of God.
>
> This God I have inside of me goes off every once in a while and opens me to the motions, to beauty and sadness in the universe. That is, now and again I feel the compulsion to meet the world around me. I'm filled with wonder, I'm possessed as it were, I feel so good I think I'm crazy. So my God isn't beyond me, it's within me and opens me to Godliness in the world."

The record contains only a brief summary of the proceedings at the hearing, prepared by the clerk of the Local Draft Board, stating that petitioner appeared with a supporting witness "to help him in explaining his case" (R. 34).

Following the hearing, the Local Board reaffirmed its determination that petitioner should be classified as 1-A, but on August 13, 1959, forwarded his file to the Selective Service Appeal Board upon petitioner's expression of dis-

satisfaction with the ruling (R. 34). In accordance with Section 6(j) of the Act, an investigation was made by the Department of Justice in connection with the appeal, and a hearing was conducted on February 29, 1960, before a hearing officer. In the course of the investigation, statements on petitioner's behalf were submitted by acquaintances, and petitioner also submitted a further statement explaining the nature and sources of his beliefs respecting war (R. 45-54). The Department of Justice reported to the Appeal Board that the hearing officer had been told by petitioner that "he had no orthodox religious background," and that he did not pray (R. 36, 37). The hearing officer, insofar as the report shows, did not question the sincerity of petitioner's beliefs, but concluded that petitioner "evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act" (R. 37). The Department of Justice recommended that petitioner's "claim be not sustained by [the Appeal] Board" (R. 38).

On July 29, 1960, the Appeal Board furnished petitioner with a copy of the recommendation of the Department of Justice, and notified petitioner that he would be afforded opportunity to make a written reply thereto (R. 54-55). In response petitioner submitted a lengthy letter stating, *inter alia* (R. 57-61):

> I have never directly answered 'yes' or 'no' to your question "Do you believe in a Supreme Being" because I do not know what you mean by the phrase . . . However, I'm moved by many of the elements in the world-in creation.
>
> You might say I believe in them. I believe in these elements because they are there . . . We say, that a tree is beautiful. But why? Because the tree moves us. The branches, the leaves, the very form of the tree,

> the forces it exemplifies. I do not choose to name this tree God as if that would explain its reason or essence. This is a very distinctive tree and deserves a new name and a reverence that is open to the endless number of things the tree tells us—of form, life and death, of ourselves, our own existence.
>
> I don't think this is lack of belief. I'm upheld by creation, finding ease as well as pain there . . . I believe in elements of this creation like star or animal motion. And I'd work toward an understanding with them called living relationship or form of love.
>
> This is the conscious effort of my life and I have already suffered some regarding it . . .

On November 18, 1960, the Appeal Board determined that petitioner's classification of 1-A should remain in effect. Thereafter, petitioner was ordered to report for a pre-induction physical examination on August 30, 1961 (R. 63). Petitioner wrote the Local Board that he would not appear for the examination because of his beliefs, and the examination was not given at the appointed time (R. 62).

Thereafter, petitioner was ordered to report for induction into military service on November 22, 1961 (R. 65). The order showed that petitioner was classified as a delinquent in view of his failure to submit to the pre-induction physical examination *(ibid.)*. Petitioner presented himself at the induction station as directed, but refused to be processed for induction (R. 8). Petitioner's Record of Induction form shows, in an attached Report of Medical Examination, that some entries were made respecting medical data of petitioner, and that the original date for examination—August 30, 1961—was crossed out and the date of November 22, 1961, substituted in its place (R. 73). In addition, there is stamped over the form's notation "PIP", presumably referring to pre-induction physical, the

word "INDUCTEE" *(ibid.)*. Apart from the foregoing, the record does not show to what extent, if any, a physical examination was given to petitioner at the time scheduled for his induction.

In January, 1962, petitioner's file was referred to the office of the United States Attorney in San Francisco (R. 75-76). In June of the same year petitioner wrote identical letters to his Local Draft Board and to the California State Headquarters for Selective Service requesting permission to be given a physical examination (R. 77, 79). The letters explained that the request was made on advice of counsel, to the end that petitioner "might better present my objection to war and opposition to the military institution at future hearings of my case" *(ibid.)*. A similar request was made in a letter to the Director of Selective Service, General Hershey, dated July 6, 1962 (R. 81). To this letter was attached an additional letter from petitioner to General Hershey dealing with petitioner's beliefs respecting his objections to military service, which in many respects is repetitious of earlier statements. In part, the statement reads as follows (R. 82-87):

> I have never answered "yes" or "no" to the question "Do you believe in a Supreme Being?", for several reasons. For one, I was not sure of the Government's definition of a Supreme Being and, as far as I know, the government has never defined the words "Supreme Being" in print or in any law . . . The nature of my belief is more complex and I must have more room to expand my thoughts and to express, or translate, my beliefs through the medium of language. I find this task additionally difficult because I place the stress of my belief on the products, the elements in creation, rather than on a reverence toward the possible Creator of these elements and mysteries of the universe.

This reverence for the elements in the universe before that of the possible creator might be unorthodox, but it is not foreign to religious thought. Witness the writings of Buddha (those attributed to him and early followers), and of Lao Tzu as well as Christian Mystics like Boehme and Blake.

• • • • • • •

I feel that one is not amiss in terming my conviction "religious" in that it is based on vision and a dedication to that vision, and I feel that this vision and my commitment to it fits into a definite tradition if not into any specific historical group.

• • • • • • •

I'm motivated by what Albert Schweitzer calls a "reverence for life," I think of myself as a receptive organ through which the tragedy and beauty of the world are perceived.

• • • • • • •

The presence of other living beings in the universe sounds a call, presents a vision, a fact, a mysterious reality that I cannot deny and to which I feel the impulse to relate.

I view physical violence on the other hand as a denial of life.

• • • • • • •

My conviction is not based on intellectual conclusions alone, but is primarily based on the promptings of my heart and the sense of relationship with all living elements in nature."

Petitioner's requests for a physical examination were denied both by the Local Board and the California State Headquarters (R. 78, 80).

B. Proceedings Before the District Court

On September 26, 1962, petitioner was indicted under Section 12(a) of the Act on the ground that he "did, on the

22nd day of November, 1961 . . . knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States . . . (R. 1-2)". Petitioner was tried on November 16, 1963, without jury, the evidence consisting principally of his selective service file. Petitioner testified briefly at his trial with respect to his claim for conscientious objector's status as follows (R. 9):

> I think the basic reason—my religious basis for my conscientious objection to war is a reference to all living things. I feel a relationship to all other living beings, and I feel called upon to respect them, and I could not kill them or engage in an institution such as the Armed Forces, which predicates this belief, which would lead one possibly in the service to commit such an act to kill.

Petitioner repeated his earlier statements that he was unable to make an unqualified answer to the question of whether he believed in a Supreme Being, and explained (R. 10-11):

> I have also said that I couldn't possibly give the answer in just a yes or no question, because I think I have some right to define God or my religious beliefs in my own words.
>
> • • • • • • •
>
> I think that my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of the essence being alive, and my respecting and loving this livingness in other objects and human beings.
>
> • • • • • • •
>
> I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.

Finally, in answer to a question on cross-examination as to his understanding of the term "religion," petitioner stated *(ibid.)*:

> By "religion"—I think in my own terms, religion is based on two things. Number one would be vision, a vision of reality in the world or the universe, and second is conviction regarding that vision, the way a person reacts to his vision of reality.

At the close of the trial, the district court forthwith found petitioner guilty as charged in the indictment (R. 11). Judgment was rendered on November 30, 1962, sentencing petitioner to six months imprisonment (R. 4-5).

C. The Decision of the Court Below

The court below affirmed the conviction. Its decision (R. 88-96) is premised upon the assumption that petitioner "was absolutely sincere" in the beliefs which motivated his opposition to induction, but rests on the conclusion that petitioner did not hold a belief "in relation to a Supreme Being" (R. 93). The court below explained that it had ruled in earlier decisions that the religious exemption under the Universal Military Training and Service Act required acceptance by the registrant of "the concept of deity" (R. 95, quoting from *Berman v. United States*, 156 F.2d 377, 381, certiorari denied, 329 U.S. 795). The statutory term "Supreme Being," according to the court below, connotes a belief in God, and in view of petitioner's failure to profess a belief in God the court ruled that he did not qualify for the exemption. Beliefs in opposition to service in the armed service not grounded on acceptance of Deity, according to the court, must at best be ascribed to "political, sociological, or philosophical views or a merely personal moral code" which the statute excludes as bases for a religious exemption.

SUMMARY OF ARGUMENT

This case, together with Nos. 50 and 51 on the Court's docket, present the common question of whether Section 6(j) of the Act is unconstitutional in that it discriminates among the kinds of religious beliefs which qualify a registrant for exemption from military service. The constitutional question need not be reached in the present case or in No. 51, however, if it is determined that the views of the respective registrants satisfy the statutory requirement for exemption of "belief in a relation to a Supreme Being."

I. Petitioner's beliefs, although not orthodox, accept the existence of a universal power beyond that of man. It may be conceded that petitioner does not identfy this power as God, but his belief in a supernatural authority is demonstrated by his expressions of faith in "some power manifest in nature which helps man in the ordering of his life in harmony with its demands," his reliance on teachings of Christian mystics, and his acceptance of concepts which transcend the power and will of mortal man.

Belief in the existence of a superhuman and universal power constitutes belief in a "Supreme Being" within the meaning of Section 6(j) of the Act. The court below erred in reading "Supreme Being" to be the equivalent of God within the meaning given to the concept of Deity by established religious systems. The present wording of Section 6(j) of the Act was adapted from language in the opinion in *Berman v. United States* 156 F.2d 377 (C.A. 9), certiorari denied, 329 U.S. 795, which utilized the word "God." Congress' substitution of the term "Supreme Being" was intended to broaden the exemption to beliefs which accept the existence of a superhuman power in the universe, irrespective of whether that power might fit into established concepts of Deity. In reading Section 6(j) of the Act to

extend the religious exemption to petitioner, moreover, a serious constitutional question is avoided.

II. Section 6(j) of the Act is in any event unconstitutional. This Court has made clear that religious freedom as protected by the First Amendment to the Constitution extends to religious beliefs which do not accept the existence of Deity or any authority beyond that of man as well as those which do. Orthodoxy in religious creed has never been a criterion for constitutional protection. It is enough that the subject matter of the belief is religious in character.

Section 6(j) of the Act, however, expressly distinguishes between religious beliefs which accept the existence of a Supreme Being and those which do not. This is an unconstitutional classification. The Constitution requires uniform treatment by the state of all religious thought, and tolerates no preference for one or another kind of belief. In view of the unconstitutionality of the statutory provision on the basis of which petitioner was denied an exempt status, his conviction must be set aside.

ARGUMENT

Introduction—The relation of this case to Cases Nos. 50 and 51. This is one of three cases before the Court this term which present related questions involving the meaning and constitutionality of the statutory language granting exemption from military service for conscientious objectors. Consideration of this case must accordingly take into account the issues and rulings below in the other cases.

United States v. Jakobson, No. 51 on the Court's docket, presents initially a question of the applicability of Section 6(j) of the Act to a set of personally conceived and unorthodox views in opposition to military service. The Court of Appeals for the Second Circuit described the registrant's beliefs as follows (325 F.2d 409, 412-413):

> "He recognizes an ultimate cause or creator of all existence which he terms 'Godness.' In theory an individual's relationship to Godness can take one or the other of two forms, a 'vertical' relationship in which man relates directly to Godness, or a 'horizontal' one in which man relates to Godness indirectly by binding himself to the qualities of Godness that exist in every creation in Mankind and throughout the world. For himself, Jakobson rejects the vertical 'one-to-one' relationship because God is unknowable to man, and because action and spiritual growth purportedly based on a direct relationship with Godness must thus lead to error since man can reason but imperfectly about the unfathomable . . . The way to arrive closer to Godness is by approaching the universals inherent in existence. The individual must deal directly with life, death, health, love, time—the 'givens' of existence stemming from the Ultimate Cause—as he finds them in himself and others.
>
> . . . . . .
>
> The taking of human life is incompatible with acceptance, which sees in all humanity 'Godness—the quality of having been created by the Ultimate Cause. Jakobson adopts the position of acceptance."

Jakobson's Draft Board and Appeal Board concluded that his claim was based "upon a personal moral code" (325 F.2d at 411, which Section 6(j) excludes from the qualifying requirement of a belief "in relation to a Supreme Being involving duties superior to those arising from any human relation." The Second Circuit rejected this conclusion. Reading Section 6(j) "as broadly as the words permit" (325 F.2d at 415) in deference to its doubts as to the constitutionality of the Supreme Being test if narrowly applied, the Court held that Jakobson's beliefs qualified him for the religious exemption. Although not attempting a precise definition of the scope of the statutory exemption, the Court concluded

that the language was not so restricted as to require a belief in "an anthropomorphic deity." 325 F.2d at 415.

United States v. Seeger, No. 50 on this Court's docket, was decided by the Court of Appeals for the Second Circuit subsequent to its decision in the *Jakobson* case. In *Seeger*, the registrant's beliefs did not accept the existence of a supernatural power, and thus did not satisfy the Supreme Being test as defined in *Jakobson*. As the Court summarized Seeger's views (326 F.2d 846, 848):

> ". . . rejecting dependence upon his Creator for a guide to morality, Seeger asserted 'more respect for . . . belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed.' . . . In language which underscored the ethical foundation of his faith, he decreed "the tremendous spiritual price that man pays for his willingness to resort to the mass destruction of human life to perpetrate his 'ideals.'"

The Second Circuit, relying on its earlier decision in *United States v. Kauten*, 133 F.2d 703, noted that religious belief, to which the language in Section 6(j) was directed, "could not be confined to a belief in a supernatural power; that today, a pervading commitment to a moral ideal is for many the equivalent of what was historically considered the response to divine commands." 326 F.2d at 853. Accordingly, the Court was faced with the constitutional question of whether Section 6(j) could validly distinguish between religious views based on the dictates of a Supreme Being, and those which do not accept the concept of a Supreme Being. The Court answered the question in the negative. The decision relies on this Court's opinion in *Torcaso v. Watkins*, 367 U.S. 488, which makes clear that the protection afforded the exercise of religious freedom in the First

Amendment is applicable to religious thought which rejects as well as that which accepts the existence of God.

For purposes of analysis under Section 6(j) of the Act, petitioner's views in the present case, as described *supra*, would appear to lie closer to those of Jakobson than to those of Seeger. As in the *Jakobson* case, petitioner's opposition to service in the armed services is grounded upon "some power manifest in nature" (R. 27) rather than simply upon a "devotion to goodness and virtue for their own sakes." *Seeger*, 326 F.2d at 848. As we have shown, however, the court below was of the opinion that petitioner's beliefs did not measure up to an acceptance of Deity, and reasoned that it necessarily followed that petitioner's views were based on " 'a merely personal moral code' " (R. 95). In this respect, the court below reads the exemption language of Section 6(j) more narrowly than does the Second Circuit.

It is evident from the foregoing that the present case and *Jakobson* differ fundamentally from the *Seeger* case with respect to the nature of the beliefs involved. Both the mysticism which characterizes petitioner's faith and the "transcendence" (325 F.2d at 416) by which Jakobson sought to know "Godness" assume the existence of forces external to man. The core of Seeger's belief, on the other hand, was "internally derived," and assumed no power beyond that of mortal man. 326 F.2d at 853. Thus, the central question in the *Seeger* case is whether Congress may constitutionally limit the conscientious objector's exemption to persons who base their opposition to military service on the dictates of a Supreme Being. A subsidiary question is whether Seeger's objections to military service were religious in nature, and thus within a class to which, it may be assumed, Congress might validly restrict the exemption. The constitutional question, however, need not be determinative in either

Jakobson or the instant case if, as held by the Second Circuit, Section 6(j) is read to encompass religious views of the nature held by the registrants in these two cases because they are based on the existence of forces external to man. In turn, it may be noted that affirmance of the Second Circuit's ruling in *Seeger* would also invalidate Section 6(j) on constitutional grounds for purposes of the instant case and *Jakobson*, in which event there would be no need to pass on the question of statutory interpretation.

In the light of the foregoing, we turn to a discussion of the questions of the statutory and constitutional questions which the instant presents.

I. Petitioner's Beliefs, as Presented in Support of His Claim for Classification as a Conscientious Objector, Satisfy the Requirements for Exemption Under Section 6(j) of the Act

A. The Ground for Petitioner's Opposition to Military Service Is a Belief in an Authority Beyond the Power of Man Which Forbids Such Service

A description of petitioner's religious views, like those of the registrant in *Jakobson*, "is not altogether easy." 325 F.2d at 412. In neither case do the beliefs fit into an orthodox theological system; in each the beliefs have been personally conceived and developed by the registrant. Petitioner answered the inquiry on the conscientious objector's questionnaire as to the origin of his beliefs by explaining that "the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic American culture, with its values derived from the western religious and philosophical tradition" (R. 27). It is not questioned by the court below that a religious faith acquired through individual study and thought may properly support an objection to military service which qualifies the registrant under Section 6(j) of the Act.

The court below, rather, rested its decision on its conclusion that petitioner did not "manifest clearly and unequivocally a belief in a Supreme Being to whom he owed obedience" (R. 95). It may be conceded that petitioner did not profess a belief in a Deity, at least in the ordinary sense that conventional religious groups understand the concept of God. As we show below, however, and contrary to the conclusion of the Court of Appeals, a faith in God is not an indispensable qualification for the religious exemption under Section 6(j) of the Act. It is enough to qualify under this provision that a registrant demonstrate a sincere belief in the existence of forces beyond the power of man, though not worshiped as God, which dictate his refusal to serve in the armed services. The record shows that petitioner has satisfied this requirement.

Thus, in the explanation of his beliefs petitioner stated in the conscientious objector's questionnaire that his views were best described in a quotation from Reverend John Haynes Holmes to the effect that "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands" (R. 27). In the same questionnaire, petitioner also referred to his "conviction concerning the sacredness of human life and the human spirit . . ." (*ibid.*). In further statements submitted in support of his application for exemption, petitioner wrote that he was "motivated by what Albert Schweitzer calls a 'reverence for life,'" and that he thought of himself "as a receptive organ through which the tragedy and beauty of the world are perceived" (R. 83). Petitioner testified during his trial that he conceived of religion as "a vision of reality in the world or universe," and a "conviction regarding that vision" (R. 11). This concept, according to petitioner, compelled "a belief in the mystery of the

heart of the essence of being alive, and . . . respecting and loving this livingness in other objects and human beings" (R. 10).

There is a marked similarity between the views before the Second Circuit in *Jakobson* and those of petitioner in that both emphasize the relationship of the individual with other persons and living objects as the touchstone to religious experience. The registrant in *Jakobson* explained to his draft board that "man relates to Godness indirectly by binding himself to the qualities of Godness that exist in every creation in Mankind and throughout the world." 325 F.2d 412. Petitioner, in like vein, stated in support of his exemption claim (R. 83, 85):

> ". . . I place the stress of my belief on the products, the elements in creation, rather than on a reverence toward the possible Creator of these elements and mysteries of the universe . . . My conviction is . . . primarily based on the promptings of my heart and the sense of relationship with all living elements in nature."

Just as the registrant in *Jakobson* reasoned that "God is unknowable to man" (325 F.2d at 413), petitioner refers, in explaining his beliefs, to the "mysteries of the universe," the "mystery of the heart of the essence of being alive," "some power manifest in nature" and to the teachings of Christian mystics (R. 83, 10, 27). Unable to define the nature of this supernatural power, both turn to life about them rather than to "a reverence toward the possible Creator" (R. 83) for meaningful religious experience. In each case, however, it is plain that the registrants do not predicate their opposition to military service solely upon an ethical rule of proper political and moral behavior, but rather upon adherence to principles which derive from a power in the universe—acknowledged although unknowable—that super-

sedes both the authority and understanding of man. This simple, yet profound act of ultimate faith characterizes even the most orthodox of religious systems.

The Court of Appeals for the Second Circuit concluded that recognition of the existence of such a power constitutes a "belief in a relation to a Supreme Being" within the meaning of Section 6(j) of the Act. The court below reached the opposite conclusion, holding that petitioner's beliefs were consistent only with "a merely personal moral code" (R. 95). We show below that the Second Circuit's reading of Section 6(j) is correct.

B. The Supreme Being Requirement of Section 6(j) of the Act Is Satisfied by a Religious Belief Which Acknowledges the Existence of an Authority Beyond the Power of Man

The history of the exemption from military service for conscientious objectors is traced by the Second Circuit in its opinion in *Jakobson*, and need not be repeated in detail here. The present language of Section 6(j) was adopted in 1948, and reference was made in the Senate Report accompanying the proposed amendment in the 1940 Act to the decision in *Berman v. United States*, 156 F.2d 377 (C.A. 9), certiorari denied, 329 U.S. 795, by way of explanation of the language changes.[1] In construing the scope of the religious exemption in the 1940 Universal Military Training and Service Act, the *Berman* opinion, as noted, *supra*, had adopted a statement of Chief Justice Hughes in his dissent in *United States v. Macintosh*, 283 U.S. 605, 633-634, that

1. Senate Report, 1268, 80th Cong., 2d Sess. p. 14 (1948), states: "(j) Conscientious objectors:—This section reenacts substantially the same provisions as were found in sub-section 5(g) of the 1940 Act. Exemption extends to anyone who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service. (See *Berman v. United States*, 156 F.2d 377, certiorari denied, 329 U.S. 795)."

religion connoted a "belief in a relation to God involving duties superior to those arising from any human relations." This reading of the 1940 Act has generally been considered to be at variance with that of the Court of Appeals in the Second Circuit, which interpreted the religious exemption in the Act to encompass opposition to military service based on "a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse." *United States v. Kauten*, 133 F.2d 703, 708 (C.A. 2). See also, *United States ex rel Phillips v. Downer*, 135 F.2d 521 (C.A. 2); *United States ex rel Reel v. Badt*, 141 F.2d 845 (C.A. 2).

From the foregoing, there is little doubt that Congress, in amending Section 6(j) of the Act in 1948, meant to follow the direction which the *Berman* opinion pointed with respect to the quality of the religious belief which is prerequisite to exemption from military service. The doubt raised by the *Kauten* opinion, and those which followed it, as to whether belief in an authority higher than man was required by Section 6(j) of the Act, was resolved against the interpretation given by the Second Circuit. Refusal to perform military service in response to ethical convictions alone may accordingly be assumed to be insufficient to qualify under the 1948 amendment. The further question of whether Section 6(j) was intended by Congress to require a belief in Deity as such—the interpretation to which the court below is committed—is now before the Court in the present case and in *Jakobson*. If it may be fairly said that the *Berman* opinion intended to answer this question affirmatively, we nonetheless do not believe it follows, because of the reference to that opinion in the 1948 Senate Report, that the 1948 amendment should be read to go as far as *Berman*.

The necessary starting point for an inquiry into the scope of the present wording of Section 6(j) is an appreciation of the serious constitutional difficulties which arise, as we show below, if it is concluded that the exemption of Section 6(j) does not apply to petitioner and to the registrant in *Jakobson*. In accordance with the established rule, every effort should be made to construe the statutory language "in the candid service of avoiding a serious constitutional doubt." *United States v. Rumley*, 345 U.S. 42, 47. Following this approach, the Second Circuit has read Section 6(j) "as broadly as the words permit," and has concluded that the views of the registrant in *Jakobson*, satisfy *the Supreme Being* test. 325 F.2d at 415. As the Second Circuit pointed out, however, its reading of the statute does not unduly strain the ordinary meaning of the statutory words. Indeed, eminent theologians have expressed opinions relating to the nature of God that "seem quite close to Jakobson's beliefs." 325 F.2d at 416, n. 5.

Although the derivation of the 1948 amendment to Section 6(j) may be traced to the *Berman* decision, the critical statutory phrase "belief in a relation to a Supreme Being" is not the exact equivalent of "belief in a relation to God," the phrase found in the *Berman* opinion. "Supreme Being" is a generic term which connotes the general principle of an authority higher than man without inviting the definitional difficulties inherent in the term "God." Religious sects are scarcely uniform in their teaching as to the characteristics of Deity. A belief which is approved by a particular creed as an acceptance of God may well be regarded by another as a rejection of God. The traditional basis for extending statutory grace to conscientious objectors, however, lies in a recognition of sincerely held religious convictions, without specification of the substantive content of such convictions, or their authorization by any particular sect.

In these circumstances, the declination of Congress to adopt the term "God," which is found in the *Berman* opinion, and the substitution of the phrase "Supreme Being," reflects an intent to avoid particularization of the religious views which will support an exemption classification, and to require only that the conscientious objector demonstrate a belief in a power beyond that of man which compels a refusal to serve in the armed forces. The draft board which must evaluate an answer to the question "Do you believe in God?" must define God, before it can classify the registrant. This inevitably plunges it into dealing with religious imponderables and passing "on nice theological distinctions" (*Jakobson*, 325 F.2d at 416) which Congress could not have assumed to be within the competence of the lay members who perform this public service. Difficulties of this character are minimized if the standard for exemption is the sincere acceptance by a registrant of a universal power beyond those evident in this world, whether or not this power is God within the meaning of established clerical thought.

Had Congress intended in 1948 to adopt the requirement of a belief in God, which the court below reads into the *Berman* opinion, it could well have used the term "God" in the language of the amendment, which otherwise tracks the phraseology which appears in that opinion. In view of the difficulties, as described above, which this course would have created, the deliberate substitution of the phrase "Supreme Being," is persuasive of a Congressional intent to simplify the task of administering the religious exemption by requiring only a belief in the existence of universal forces beyond the power of man, without identifying such forces as God. Congress indicated no desire to complicate the administration of the exemption provisions of the

Act. Indeed, the Senate Report accompanying the 1948 amendment states that the language of the amendment "reenacts substantially the same provisions as were found in sub-section 5(g) of the 1940 Act." S.Rep. 1268, 80th Cong., 2d Sess., p. 14 (1948). The exemption in 1940 Act extended to any person, "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 54 Stat. 889. The variegated beliefs which are encompassed within the field of religion, particularly within the protection of the First Amendment of the Constitution (see pp. 25-26, *infra.*), are circumscribed for more narrowly by a definition which presupposes the existence of God than by a definition which requires, without particularization, an acceptance of an authority higher than that of man. The latter concept more closely parallels the general words of the 1940 Act, which Congress in 1948 stated that it meant to reenact without substantial change.

These considerations compel the conclusion that beliefs of the kind professed by petitioner and the registrant in *Jakobson* are within the scope of the present exempting language of Section 6(j) of the Act. If they are unorthodox, that circumstance scarcely disqualifies them as religious beliefs in a society which has historically been committed to the protection of individual opinions and faiths which do not conform to established concepts. The Supreme Being test requires not orthodoxy, but only acceptance of a universal power, however the registrant may conceive of it, which is beyond that of man.

II. Section 6(j) of the Act Is in Any Event Unconstitutional

The considerations which demonstrate the unconstitutionality of Section 6(j) of the Act are set forth in Judge Kaufman's opinion in *United States v. Seeger*, 326 F.2d 846

(C.A. 2), No. 50 on this Court's docket. We subscribe to the views of the Second Circuit in the *Seeger* case, which are fully stated in the opinion and need not be repeated here. We add only the following observations.

There is no question in the present case as to whether Congress might decline altogether to exempt registrants on the ground of a conscientious objection to service in the armed forces. It may be assumed that the religious exemption is a matter of legislative grace. It does not follow, however, that an exemption, once granted, may be made available only on unconstitutional conditions. Indeed, the contrary is established law. *Speiser v. Randall*, 357 U.S. 513; *Fowler v. Rhode Island*, 345 U.S. 67; *Torcaso v. Watkins*, 367 U.S. 488.

There is also no occasion to consider whether a valid distinction may be drawn in the enactment of the exemption provisions in the Act between religious and non-religious objections to military service. Even if it may be assumed that the limitation of the exemption in the Act to religious beliefs is within the province of Congress, again it does not follow that preference may be made among religious beliefs in defining qualifications for exemption. In the cases presently before the Court, the constitutional question arises because Section 6(j) explicitly confines the scope of the exemption to those who profess a belief in a Supreme Being. If this statutory qualification could be regarded as coterminous with religious belief generally, there would be no basis for finding that Section 6(j) of the Act discriminates in the treatment of varying religious beliefs. In the light of this Court's decisions, however, the foregoing hypothesis cannot be supported. There is no escape from the conclusion that an acceptance of the existence of a Supreme Being is not prerequisite to religious beliefs which are constitutionally protected.

The most direct statement on the subject is in *Torcaso v. Watkins*, 367 U.S. 488, where the Court found unconstitutional a state requirement which conditioned the grant of a notary commission upon a declaration of a belief in God. In ruling that the condition was contrary to the equality of treatment among religions which is required by the First and Fourteenth Amendments, the Court stated that (367 U.S. at 495):

> ". . . neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."

In a footnote to the foregoing language, the Court added (*id*, at n. 11):

> "Among the religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others. See *Washington Ethical Society v. District of Columbia*, 249 F.2d 127; *Fellowship of Humanity v. County of Alameda*, 153 C.A. 2d 673, 315 P.2d 394; II Encyclopaedia of the Social Sciences 293; 4 Encyclopaedia Britannica (1957 ed.) 325-327; 21 id., at 797; Archer, Faiths Men Live By (2d ed. revised by Purinton), 120-138, 254-313; 1961 World Almanac 695, 712; Year Book of American Churches for 1961, at 29, 47."

The foregoing statement is controlling in the present case whether or not the statutory phrase "Supreme Being" is considered to be the equivalent of "God." See pp. 19-23, *supra*. Just as acceptance of the existence of God is not

essential to a constitutionally protected religious belief, neither is the acceptance of the existence of a universal power higher than man which the believer does not perceive as God. As observed by this Court in *United States v. Ballard*, 322 U.S. 78, 86:

> [Freedom of religious belief] embraces the right to maintain theories of life and death and of the hereafter which are rank hereby to followers of orthodox faiths . . . Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others.

It has never been questioned that the role of the First Amendment in matters of religion has been to protect religious beliefs of all kinds, irrespective of whether they are consistent with established doctrine concerning Deity or a Supreme Being. See *Sherbert v. Verner*, 374 U.S. 398. As summarized by the Second Circuit in the *Seeger* opinion, "belief in a Supreme Being, no matter how broadly defined, cannot embrace all those faiths which can validly claim to be called 'religious' ". 326 F.2d at 852.

In light of the foregoing, it also is not open to question that petitioner's views by which he sought to establish his exemption from military service are "religious" within the meaning and protection of the First Amendment to the Constitution. For purposes of invoking constitutional protection, it matters not whether petitioner's beliefs include acceptance of a universal power higher than that of man. But see pp. 16-18 *supra*. Petitioner's reasons for declining military service relate to his views concerning the dictates of "some power manifest in nature" (R. 27), "the sacred-

ness of human life and the human spirit" (R. 27), to his "vision of reality in the world or universe" and his "conviction regarding that vision," (R. 10), and to his "relationship with all living elements in nature" (R. 85). Petitioner considered that his faith in respect to these matters imposed duties "superior to [his] obligation to the state" (R. 27). Convictions of this character deal with religion as the term is commonly understood, whether they assert or deny a belief in superhuman power. Petitioner's faith, although perhaps not compatible with any recognized creed, has the same promptings and deals with the same subject matter as the most orthodox of faiths. As expressed by the Second Circuit in *United States v. Kauten*, 133 F.2d 703, 708, religious impulse and thought "arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe . . . It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets." It is not the popularity or the logic of beliefs that qualify them for constitutional protection. Rather, it is the subject matter of the beliefs, and there is no occasion in the present case to delineate the outer reaches of the field of religion in order to determine that the subject matter of petitioner's beliefs is religious in nature.

The breadth of religious protection afforded by the Constitution does not necessarily preclude the distinction, which Congress has attempted to make in Section 6(j) of the Act, between "religious training and belief" and "essentially political, sociological, or philosophical views or a merely personal moral code." The latter classification, to the extent that it attempts to exclude from the exemption purely secular beliefs, stands or falls constitutionally upon the

same considerations which allow or disallow an exemption in favor of religious objectors without extending the same exemption to conscientious objectors who assert only non-religious grounds for their position. The latter question is not presented in the instant case. If it may be assumed that Congress may extend the privilege of exemption only to those who profess religious grounds, however, it may not be assumed that the presence in the makeup of religious beliefs of considerations pertaining to morality, philosophy, sociology or politics could disqualify a registrant for exemption. Stated otherwise, religion within the meaning of the First Amendment of the Constitution is not a concept which can be wholly divorced from considerations of morals, ethics, or other disciplines which also relate to secular thought. These elements are likely to be present in all religious systems. It is accordingly not enough to remove petitioner from the protection of the Constitution to detect in his explanations for his refusal to perform military service the presence of philosophical, or ethical reasoning. The subject matter of petitioner's beliefs are essentially religious in character. No more need be shown to invoke constitutional protection.

From the foregoing it is plain that Section 6(j) of the Act, in limiting the religious exemption to those who establish their belief in a Supreme Being, circumscribes an area of religious belief which is more restricted than that covered by the Constitution. Congress has extended the privilege of exemption to persons who subscribe to certain kinds of religious beliefs, but not to those who subscribe to other kinds of religious beliefs.

The decisional law is clear that a distinction of this character cannot constitutionally stand. "Neither [the State nor the Federal Government] can pass laws which aid one religion, aid all religions, or prefer one religion over

another." *Everson v. Board of Education*, 330 U.S. 1, 15. "The government must be neutral when it comes to competition between sects." *Zorach v. Clauson*, 343 U.S. 306, 684. "In the relationship between man and religion, the State is firmly committed to a position of neutrality." *Abington School District v. Schempp*, 374 U.S. 203, 226. "The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position." *United States v. Ballard*, 322 U.S. 78, 86. See also, *Sherbert v. Verner*, 374 U.S. 398; *Illinois ex. rel. McCollum v. Board of Education*, 333 U.S. 203; *Fowler v. Rhode Island*, 345 U.S. 67.

The decisions cited above, as fully explained by the Second Circuit in its opinion in *Seeger*, compel the conclusion that Section 6(j) of the Act violates the First Amendment of the Constitution, and also imposes an arbitrary classification forbidden by the Fifth Amendment to the Constitution. The application of the provision to petitioner was accordingly invalid, and his conviction cannot stand.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below be reversed, and the conviction set aside.

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September, 1964.

(Appendix follows)

Appendix

The relevant provisions of the Universal Military Training and Service Act, 50 U.S.C. App. 451, *et seq.*, are as follows:

Section 6(j), 50 U.S.C., App. 456(j):

> "Nothing contained in this title [sections 451-454 and 455-471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board, shall, if he is inducted into the armed forces under this title [said sections], be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title [section 462 of this Appendix], to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix]. Any person claiming exemp-

tion from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title [said sections], he shall be assigned to noncombatant services as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescibe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix]."

* * * * * * *

Section 12(a), 50 U.S.C., App. 462(a):

"(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451-454 and 455-471 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to

perform such duty, and any person charged with such duty, or having and exercising any authority under said title [said sections], rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title [said sections], or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title [said sections], or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title [said sections], or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said sections], or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this [said sections] or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title [said sections] unless such

person has been actually inducted for the training and service prescribed under this title [said sections] or unless he is subject to trial by court martial under laws in force prior to the enactment of this title [June 24, 1948]. Precedence shall be given by court to the trial of cases arising under this title, and such cases shall, upon request of the Attorney General, be advanced on the docket for immediate hearing."

The relevant provisions of the Constitution of the United States are as follows:

Amendment I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

* * * * * * *

Amendment V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Summary of argument	9
Argument	15
I. The First Amendment permits Congress to accommodate the free exercise of religion with the needs of national defense by assigning to noncombatant service or national service outside the armed forces persons who, by reason of belief in a divine obligation, are opposed to participation in war in any form	19
II. The definition of the class exempted from combatant service and training by section 6(j) is a permissible classification reasonably accommodating the needs of national defense with the interest in religious liberty safeguarded by the first amendment	34
A. The historical evolution of the definition of a religious objection of participation in war in any form shows that it is neither arbitrary nor invidious	41
1. Pre-Civil War	41
2. The Civil War	49
3. World War I	55
4. The present act	60
B. The statutory definition is reasonably adapted to promoting the free exercise of religion	72
C. Experience with the exemption attests to its reasonableness	78

744-799—64——1

Argument—Continued
II. The definition, etc.—Continued
D. The distinction drawn by section 6(j) between a religious obligation to a supreme being and a political or philosophical conviction or a personal moral code conforms to the religious traditions of the American people ..... Page 80
Conclusion 83

CITATIONS

Cases:

Abington School District v. *Schempp*, 374 U.S. 203 ..... 15, 30, 81, 82
Berman v. *United States*, 156 F. 2d 377, certiorari denied, 329 U.S. 795 70
Braunfeld v. *Brown*, 366 U.S. 599 28
Clark v. *United States*, 236 F. 2d 13, certiorari denied, 352 U.S. 882 18
Engel v. *Vitale*, 370 U.S. 421 ..... 15, 81
Etcheverry v. *United States*, 320 F. 2d 873, certiorari denied, 364 U.S. 843 18
Everson v. *Board of Education*, 330 U.S. 1 23
Gallagher v. *Crown Kosher Super Market*, 366 U.S. 617 ..... 28, 29, 30
George v. *United States*, 196 F. 2d 445, certiorari denied, 344 U.S. 843 18
Girouard v. *United States*, 328 U.S. 61 ..... 20, 25, 72
Goldman v. *United States*, 245 U.S. 474 ..... 18, 21
Hamilton v. *Regents of the University of California*, 293 U.S. 245 ..... 20, 44
Jakobson v. *United States*, 325 F. 2d 409, pending on writ of certiorari, No. 51, this Term 75
Kramer v. *United States*, 245 U.S. 478 ..... 18, 21
Louisville Gas Co. v. *Coleman*, 277 U.S. 32 40
McCollum v. *Board of Education*, 333 U.S. 203 27
McGowan v. *Maryland*, 366 U.S. 420 28
Peter v. *United States*, — F. 2d —, pending on writ of certiorari, No. 29, this Term 18
Phillips, United States ex rel. v. *Downer*, 135 F. 2d 521 70
Reel, United States ex rel. v. *Badt*, 141 F. 2d 845 70
Ruthenberg v. *United States*, 245 U.S. 480 ..... 18, 21

Cases—Continued Page
Selective Draft Law Cases, 245 U.S. 366---------- 18, 20, 21, 28, 29, 33
Sherbert v. *Verner*, 374 U.S. 398---------- 11, 31, 33
Stephens v. *United States*, 247 U.S. 504---------- 22
Torcaso v. *Watkins*, 367 U.S. 488---------- 23, 24, 73, 74, 75
Two Guys from Harrison-Allentown, Inc. v. *McGinley*, 366 U.S. 582---------- 28
United States v. *Bendik*, 220 F. 2d 249---------- 18
United States v. *Deline*, 223 F. 2d 96---------- 18
United States v. *Jakobson*, No. 51, this Term---------- 16, 72
United States v. *Kauten*, 133 F. 2d 703--- 36, 69, 70, 73, 74
United States v. *Macintosh*, 283 U.S. 605---------- 20, 70, 71, 72, 81
Yanyar v. *United States*, 246 U. S. 649---------- 22
Zorach v. *Clauson*, 343 U.S. 306---------- 26, 81

Constitutions, treaty and statutes:
Constitution of the United States:
Article VI, clause 3---------- 9
Bill of rights---------- 46
Fifth amendment---------- 9, 10, 17, 19
First amendment---------- 9, 10, 11, 13, 17, 19, 20, 22, 23, 24, 26, 29, 32, 50, 60, 72, 75
Constitution of the Confederacy:
First amendment, Article I, Section 9, Clause 12---------- 50
Second amendment---------- 46
Treaty of Ghent---------- 48
Selective Draft Law of 1917---------- 20, 55
Selective Training and Service Act of 1940, 54 Stat. 889---------- 45, 60
13 Stat. 9---------- 50
Universal Military Service and Training Act:
Section 6(f)---------- 10, 18
Section 6(j)---------- 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 29, 31, 32, 34, 40, 41, 59, 60, 71, 72, 73, 75, 78, 80, 83.
Acts of the General Assembly of Virginia (1862)---------- 50
N.C. Public Laws, 2d Extra Sess. 1861---------- 50
Public Laws of the Confederate States of America, 1st Cong., 2d Sess., ch. 45---------- 50

Miscellaneous:

	Page
The American Archives, 4th series, vol. VI (M. St. Clair Clark and Peter Force, 1846) 1504	46
American Friends Service Committee, *Speak Truth to Power*	6
1 *Annals of Congress* 749	46, 47, 71
26 *Annals of Congress* 772–773	48, 49
Brown, Harrison, *The Challenge of Man's Future*	6
Church of the Brethren, *Minutes of the Annual Meetings, 1778–1909* (Brethren Publishing House, 1909) 40–41	43
63 Cong. Globe	51, 52, 54
55 Cong. Rec:	
1473	55
1474	58
1476	58
1478	55, 56, 57, 58
1479	57, 58
20699–20702, Sept. 2, 1964 (daily ed.)	30
Congress Looks at the Conscientious Objector (National Service Board for Religious Objectors, 1943)	61, 62, 63, 64, 65, 67, 68
Conklin, *Conscientious Objector Provision*, 51 Geo. L.J. 252	23
Donnici, *Government Encouragement of Religious Ideology*, 13 J. of Pub. L. 16	23
Drinan, *Religions, the Courts and Public Policy*	23
Field, *Pacifism and Conscientious Objection* (Cambridge University Press, 1945)	38
Floyd, William, *War Resistance*	6
Freeman, *Exemptions from Civil Responsibility*, 20 Ohio St. L.J. 437	23
Fromm, Erich *Escape from Freedom*	6
Gandhi, Mohandas, *Indian Home Rule*	6
Gandhi, Mohandas *Satyagraha*	6
II Godcharles, *Pennsylvania, Political, Governmental, Military*	42, 44
Hearings on S. 4164 before the Senate Committee on Military Affairs, 73d Cong, 3d Sess. 3	61
Huxley, *Essays of a Humanist* (1964)	39
Huxley, *Religion without Revelation* (1927)	39

Miscellaneous—Continued

Page

Jones, *History of the Early Settlement of the Juniata Valley* (Henry B. Ashmead, 1856)---- 43, 44

Jones, E. Stanley, *Mahatma Gandhi*---- 6

Kaplan, Alexandre, *Gandhi et Tolstoi: Les sources d'une filiation spirituelle*---- 6

Katz, *Religion and American Constitutions*---- 23

Kurland, *Religion and the Law*---- 19, 23

Kvitko, David, *A Philosophic Study of Tolstoi*---- 6

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Muller, Herbert J., *The Uses of the Past*---- 6

Pennsylvania Archives, 8th series, vol. III---- 42, 45

Pfeffer, *Church, State, and Freedom* (1953)---- 23

Report of the Provost Marshal General to the Secretary of War on the First Draft Under the Selective Service Act, 1917---- 58

Robinson, *Honest to God* (1963)---- 37, 39

Russell, *Conscientious Objector Recognition*, 20 Geo. Wash. L. Rev. 409---- 23

Russell, Bertrand, *Which Way to Peace*---- 6

S. Rep. No. 1268, 80th Cong., 2d Sess. 14---- 71

Second Report of the Provost Marshal General to the Secretary of War on the Operations of the Selective Service System to December 20, 1918---- 58, 59

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Selective Service System Monograph No. 11, Conscientious Objection (1950)---- 42, 43, 44, 45, 46, 49, 50

Shorter Oxford English Dictionary (Oxford 1936)-- 16

Smith and Bell, *The Conscientious-Objector Program—A Search for Sincerity*, 19 U. of Pitts. L. Rev. 695---- 38, 79

Stokes and Pfeffer, *Church and State in the United States*---- 42

II Tillich, *Systematic Theology*---- 37

Waite, *Section 5(g) of the Selective Service Act, as Amended by the Court*, 29 Minn. L. Rev. 22--- 23

Webster's New Collegiate Dictionary (2d ed., 1959)---- 76

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 50

UNITED STATES OF AMERICA, PETITIONER

v.

DANIEL ANDREW SEEGER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (R. 25–39) is reported at 326 F. 2d 846. The opinion of the district court (R. 14–25) is reported at 216 F. Supp. 516.

JURISDICTION

The judgment of the court of appeals was entered on January 20, 1964 (R. 40). On February 19, 1964, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to and including March 20, 1964, on which date the petition was filed. The Court granted the writ on May 4, 1964. 377 U.S.

922. The jurisdiction of the Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Congress may constitutionally exempt from combatant service and assign to other national service that class of persons "conscientiously opposed to participation in war in any form" whose opposition is grounded in a "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation * * *."

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides in pertinent part:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *

STATEMENT

Respondent was convicted, after a trial by the court in the United States District Court for the Southern District of New York, of having refused to submit to induction into the armed forces, and was sentenced to imprisonment for a year and a day (R. 2). On appeal, the conviction was reversed.

Respondent first registered with his local board on September 4, 1953, upon reaching his eighteenth birthday. In his classification questionnaire he requested deferment as a student but made no claim for exemption as a conscientious objector (R. 60, 61). He was initially classified 1–A, but on July 26, 1955, he was given a 2–S (student) classification, which was renewed on October 9, 1956, and again on April 2, 1957. He first claimed that he was a conscientious objector in a letter written to his local board on July 12, 1957 (R. 66).

In this letter, respondent stated that his claim was the "result of the resolution of a number of problems of conscience with which I have been preoccupied for the past months," and that his decision arose "from what I believe to be considerations of validity from the standpoint of the welfare of humanity and the preservation of the democratic values which we in the United States are struggling to maintain." He said that he had concluded that "war, from the practical standpoint, is futile and self-defeating, and that from the more important moral standpoint, it is unethical" (R. 66).

Together with his letter, respondent mailed a completed special form for conscientious objectors (R. 68). In this form the claim for exemption states (R. 69):

> I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form * * *.

Respondent crossed out "training and" and put single quotes around "religious" so that his claim read that his opposition to participation in war was "by reason of my 'religious' belief" (R. 69).

Respondent's answer to the question concerning his belief in a Supreme Being begins by stating that "the existence of God cannot be proven or disproven, and the essence of his nature cannot be determined" (R. 73). He went on to say that he believed in "goodness and virtue for their own sakes, and a religious faith in a purely ethical creed"; while "[t]he cosmic order does, perhaps, suggest a creative intelligence," nevertheless "one may doubt that this intelligence is informed with a moral purpose" (R. 73).

Respondent answered at length the question whether his belief in a Supreme Being involved duties which to him were superior to those arising from any human relation (R. 73–76). He began by quoting Tolstoi to the effect that men do more harm "by attempting to prevent evil by violence than if they endured the evil" (R. 73). He declared that the first two world wars had failed to make the world safe for democracy, and that World War III was not likely to be more successful; that it is "our moral responsibility" to search for a way to preserve "the dignity and worth of the individual, the faith in reason, freedom and individuality, and the opportunity to improve life for which democracy stands"; and that military mobilization will not achieve this end because, rather than deterring aggression, it is bound to lead to World War III which will result in "the destruction of

human civilization" (R. 74). "[O]ur commitment to violence," he continued, has resulted in a "deplorable cheapening of life" because of our "unthinking acceptance of the destruction of masses of people, innocent and guilty alike, as a matter of strategic and practical necessity" (R. 74–75). It had already resulted, in his view, in an acquiescence "to measures generally considered central characteristics of totalitarianism: spying on fellow citizens; anonymous denunciations; restrictions on freedom of movement, speech, and press; prosecution for beliefs rather than acts; the reversal of the traditional assumption of innocence until proof of guilt, etc." (R. 75). Respondent stated further that the training of soldiers develops in them "complete dependence and unthinking obedience" to their leaders; that this use of "mob psychology" weakens "the spiritual roots of democracy, which requires exactly the opposite attitudes for its healthy development"; and that the process has spread "to our whole culture" so that individual rights have been "submerged in the interests of national security; and we have already had widespread and irrational hysteria abroad in the land," with attitudes which "strike at the very heart of democracy" (R. 75). He concluded that we cannot "barter democracy for the illusory security of the atomic stockpile" (R. 76). The only solution he saw was "establishing a world order on the principles of equity and justice" before we "die of giantism or monstrosity, like the dinosaurs before us" (R. 76).

Respondent answered the question concerning the source of his training and belief with a list of books

which he had read over the past ten months [1] "and my own deductions from information and concepts set forth in a large number of other non-pacifist writings" [2] (R. 77). He stated that he relied on no one particular person for religious guidance but that he resolved "spiritual and ethical problems by reading relevant essays or books, by discussion and debate with colleagues, and ultimately, by following the dictates of my conscience" (R. 77). Finally, in answer to the question as to the circumstances, if any, in which he believed in the use of force, he quoted Tolstoi that "no use of force is ever right," but stated that he tended to favor Bertrand Russell's "broader outlook" that one should not "expect any absolute hard and fast rules of conduct to which no exception can be found" (R. 77).

A year later, respondent submitted another questionnaire for registrants claiming conscientious objector status, in which he further refined his views as to the circumstances in which he believed in the use of force (R. 83). He first stated that distinctions must be made as to whether the force is violent or non-violent, active or passive, within or without a social contract, creative or destructive, restraining

[1] William Floyd, *War Resistance;* Mohandas Gandhi, *Indian Home Rule;* Mohandas Gandhi, *Satyagraha;* E. Stanley Jones, *Mohatma Gandhi;* Alexandre Kaplan, *Gandhi et Tolstoi: Les sources d'une filiation spirituelle;* David Kvitko, *A Philosophic Study of Tolstoi;* Bertrand Russell, *Which Way to Peace;* American Friends Service Committee, *Speak Truth to Power.*

[2] He listed as examples: Herbert J. Muller, *The Uses of the Past;* Harrison Brown, *The Challenge of Man's Future;* Erich Fromm, *Escape From Freedom.*

or vengeful, and dangerous or harmless to bystanders and other innocent persons. He then quoted Aldous Huxley for the proposition that the force used by armies, unlike that used by police, is not limited to the restraint of the guilty, but rather destroys all things and people within its range; and that, while the authority for the use of police force grows out of community consent, military force involves the arrogation by States of the right to judge and punish other States. He concluded that he believed in the use of force to "*restrain* the attacker and the thief" (emphasis in the original), provided that doing so did not involve "killing or injuring other innocent people" (R. 83–84).

On August 26, 1958, despite his request for exemption, respondent was classified 1–A (R. 62). When he appealed from that classification, the F.B.I., following normal procedure, conducted an investigation. The resume of the investigation states that the F.B.I. found that respondent had a good character and reputation, and that no one who was aware of his views questioned their sincerity. His views were characterized as "probably based upon ethical and philosophical grounds" (R. 10–14).

In his appearance before the hearing officer, respondent indicated that he was not affiliated with any of the sects to which many conscientious objectors belong. He had "strong sympathetic support" for the Quaker movement and sympathy for some of the views of the Jehovah's Witnesses, although he criticized their "dogmatic approach to the problem" (R. 5). He expressed the view that the matter is a

personal problem and that each individual "must make up his own mind as to how he feels toward his fellow man" (R. 5).

The hearing officer concluded that respondent's objections to participation in war were sincere and honest, and that they were "based upon his individual training and belief, both of which include research in religious and cultural fields" (R. 7). On this basis, he recommended that respondent's appeal from his classification be sustained (R. 7). The Department of Justice agreed that the information in the record concerning respondent's character, conduct, and moral behavior was favorable (R. 8), but found that he had failed to make out a claim for exemption within the statutory meaning, "since his objections are not based upon religious training and belief in relation to a Supreme Being" as defined in the Act (R. 9). It therefore recommended that the claim not be sustained by the Appeal Board (R. 9).

The final document submitted by respondent expounding his views was a nine-page attachment to a letter to the chairman of the Appeal Board, undertaking to answer the recommendation of the Department of Justice (R. 93–102). Respondent stated (R. 99):

> Personally, I do not believe that life derives any meaning from cosmic design but I do believe that person can give his life meaning by doing something worthwhile with it, i.e. by relating his existence in a constructive and compassionate way to the problems of his social environment. In this sense pacifism, among

other things, is for me a transcendant concern and it is in this respect that I consider myself religious.

Respondent's appeal was rejected, and his 1–A classification was sustained by the local appeal board and by the National Selective Service Appeal Board (R. 63–64). Respondent was thereupon ordered to report for induction, and he refused to comply (R. 121).

At respondent's trial, the district court found that his claim to exemption was properly denied under Section 6(j), which grants a limited exemption to those who base their objections on belief in a Supreme Being. The court ruled further that this limitation violated neither the First Amendment nor Article VI, Clause 3 of the Constitution (R. 25–26). The court of appeals reversed, holding that the "Supreme Being requirement" of the statute "create[d] an impermissible classification" under the due process clause of the Fifth Amendment in that it distinguished "between internally derived and externally compelled beliefs." Consequently, it concluded, respondent was entitled to an exemption (R. 37–38).

SUMMARY OF ARGUMENT

The only question at issue is the constitutionality of Section 6(j) of the Selective Service and Training Act. However broadly the language is construed, respondent cannot qualify for a statutory exemption from combatant training and service which is expressly limited to those whose objection to participation in war in any form arises from a "belief in a relation to a Supreme Being involving duties superior to those aris-

ing from any human relation" as distinguished from "political, sociological, or philosophical views" or a "personal moral code." For respondent derives his opposition to war from political, sociological, and philosophical analysis; he is obeying a personal moral code based upon "how he feels towards his fellow man."

Two kinds of constitutional attack are leveled at Section 6(j). One argues that the First Amendment denies Congress power to exempt from combatant training and service persons who oppose participation in war in any form upon "religious" grounds—even though the term "religion" is used in the statute in the same sense as in the First Amendment—unless other non-religious conscientious objectors are granted a similar exemption. The second line of attack, which was adopted by the court below, challenges the particular definition of the exempt class found in Section 6(j) upon the ground that it draws a line between different forms of "religious" expression which cannot stand consistently with the due process clause of the Fifth Amendment. We deal with the two arguments successively.

In Point I we show that the First Amendment permits Congress to accommodate the free exercise of religion with the needs of national defense by assigning to non-combatant service or national service outside the armed forces persons who, by reason of belief in a divine obligation, are opposed to participation in war in any form.

The wall between church and state erected by the establishment clause does not require the government

to ignore religious beliefs in the framing of legislation dealing with conduct conforming, in some instances, to the dictates of religion. In every substantial sense Section 6(j) is as neutral a measure as could be devised. It puts no pressure upon anyone to avow or disavow a religious faith, or to practice or refrain from religious exercise. It does not disqualify any individual from any public or private position or restrict his activity because of his religion. There is no significant likelihood that anyone would adopt or change his religion in an effort to be assigned, as a conscientious objector, to some other form of national service than participation in the armed forces; indeed, if the facts became known, such a man could not qualify for the exemption.

For the State to avoid intruding upon freedom of religion by refusing to punish those who obey the dictates of a superior obligation is to remain neutral—to avoid the penalization of religion rather than to prefer it. The Court's decisions already recognize that the First Amendment permits—and perhaps requires—such practical accommodations in order to minimize conflict between religious belief and governmental regulation.

In the Sunday Blue Law cases, 366 U.S. 420, 582, and 617, for example, the majority and dissenting opinions recognized the power of the State (indeed, in the view of the dissenters, the duty of the State) to make exemptions for persons whose Sabbath was on Saturday in order to protect their freedom of religion. Only last Term, in *Sherbert* v. *Verner*, 374 U.S. 398, this Court held that a State was required, in order

to protect religious freedom, to treat a particular religious sect differently from other religious, as well as from all non-religious, persons. Certainly, then, Congress may exempt from combatant service persons whose opposition to war is based on religious conviction, without extending a like exemption to persons who do not hold like religious views.

In Point II we deal with the argument that, even though Congress may accommodate religious freedom with the need for national service by assigning those with religious scruples against war to noncombatant service in or outside the armed forces, still Section 6(j) is unconstitutional because Congress drew an impermissible line in making the test of religious conviction the possession of "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" as distinguished from "essentially political, sociological, or philosophical views" or a "personal moral code." Here it is essential to view in full perspective the legislative problem of defining any exemption for conscientious objectors. The framing of a draft law involves legislative judgments that the courts may not supersede unless the Congress exceeds its function.

The heart of the legislative problem has always been to draw a fair line defining the limits of the exemption in what must now be regarded, in cold intellectual analysis, as a continuum of beliefs ranging from the revealed commands of a fundamentalist God through modern Protestant theology to moral philosophy and ultimately to political judgments based upon the same kind of considerations that must be weighed by Con-

gress when it declares war, raises armies, and appropriates money for the national defense. Nor can the problem be abstracted from its historical evolution among the traditions and fundamental beliefs of the American people.

Section 6(j) draws a rational line, introduces no invidious distinctions, and fairly implements the Congressional purpose of securing the interest in religious freedom safeguarded by the free exercise clause of the First Amendment. That conclusion is supported by four considerations.

First, the statutory definition of the exempt class is the product of a long historical process and mature deliberation in which the alternatives were fully canvassed. The evolution of the exemption is itself testimony to its reasonableness and consistency with constitutional limitations.

Second, the definition in Section 6(j) implements the congressional purpose to exempt from combatant training and service and assign to other work all those opposed to participation in war by reason of their "religion" as that term is used in the First Amendment. We think the two are substantially coextensive, but whether there is exact coincidence is immaterial. The exemption is, at least, a sincere and careful effort to protect freedom of religion by relieving one who is obeying his religious tenets from the necessity of choosing between defiance of the State and disobedience to the will of his particular God however he may conceive Him. It reaches the core of religious objectors even if there is room for argument about the periphery. For there is a clear

difference in principle between those who believe that in refusing to participate in military training or service they are following a divine command and those who conclude, on the basis of their own reasoning, that war is an immoral instrument in human relations. For the religious man, conflicts between God's ordinance and human obligations admit of only one solution. For the moral man it is a serious dilemma to be forced to choose between the judgments of the State and his own convictions of right and wrong in human relations. The latter's predicament, however, is of a different order than that of the religious man, and it is not wholly uncommon to men in an organized society.

Third, the standard established by section 6(j) has been demonstrated to be fair and workable by long operation. While a few individuals in a position like Seeger may have felt some sense of injustice, it is clear that on the whole the line that Congress drew has been understood and wholeheartedly accepted by the hundreds of thousands affected by the draft. In an area of great sensitivity there has been no substantial indication that the exemption is too narrow and no evidence of resentment on the part of draftees or their families because conscientious objectors within Section 6(j) were exempted while they were required to serve.

Fourth, the definition of "religious training and belief" in Section 6(j)—the distinction between human duties and divine obligations—is one that commends itself to the American people as understandable and consonant with national ideals and tradi-

tions. As the Court said in *Zorach* v. *Clauson*, 343 U.S. 306, 313:

> We are a religious people whose institutions presuppose a Supreme Being.

We do not suggest that this long-maintained consensus of opinion supports aid to religion or discrimination against non-believers. Compare *Engel* v. *Vitale*, 370 U.S. 421; *Abington School District* v. *Schempp*, 374 U.S. 203. Our point is that, if the government may seek to accommodate the needs of national defense with the free exercise of religion, as we have contended, then it is relevant, in drawing the definition of those exempted from combatant duty, to consider the ancient national understanding of what constitutes religion. For while public understanding is not alone enough to validate a demonstrably arbitrary or invidious distinction, it is an essential element in framing and administering a program that touches the lives of almost everyone as widely and as intimately as universal military training and service.

ARGUMENT

Introductory.—This case involves the constitutionality of Section 6(j) of the Universal Military Training and Service Act. That provision exempts from combatant service and training any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." Such persons remain subject to the draft but are assigned to non-combatant service or, if their religious beliefs require, to forms of national service outside the armed forces.

Section 6(j) defines "religious training and belief" as:

> belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

The net effect is to exempt from combatant service or training but to subject to the universal obligation of assigned national service those persons whose conscientious opposition to war in any form is based upon belief in a relation to a Supreme Being imposing duties superior to all human relationships.

Although it is possible to read Section 6(j) as referring only to the iron commands of a fundamentalist God, transmitted by unquestionable divine revelation, we think that the test is considerably more liberal. In our view, which is explained at more length below (pp. 72–73) and in our brief in *United States* v. *Jakobson,* No. 51, this Term, Congress did not require belief in any particular kind of God, and religious beliefs like those of such modern Protestant theologians as Professor Tillich and Dr. Robinson would satisfy the statutory requirement of "belief in a relation to a Supreme Being." The essence of the statutory standard lies in the contrast between duties resulting from man's relationship to his fellow men and superior obligations owed to a God or ideal fairly characterized as divine.[3]

[3] We use the adjective "divine" to denote not merely something "of or pertaining to God or a god" but also "more than human, excellent in a superhuman degree." *Shorter Oxford English Dictionary* (Oxford 1936).

However broadly the words of Section 6(j) are construed respondent Seeger does not qualify for the statutory exemption. His views are "a purely ethical creed." He based his refusal to participate in military training entirely upon his judgment concerning the effect war has upon men and human affairs (R. 73). He derives his opposition to war, sincere as his conviction may be, not from religious teaching but from essentially political, sociological, or philosophical views. He is not responding to an obligation superior, in his conscience, to all human obligations; he is obeying a personal moral code based, according to his own statement, upon "how he feels towards his fellow man" (R. 5). Seeger's thoughtfulness and his steadfastness in pursuing what he deems right may command respect, but his views do not constitute the kind of belief in a divine obligation that Congress chose to exempt.

Since Seeger does not qualify for the statutory exemption, he is forced to attack its constitutionality and argue that since the government chose to exempt those whose opposition to war is based upon belief in a duty rising above all human obligations, the government must also exempt those whose conscientious opposition is based upon ethical convictions derived from political, social, or moral philosophy, or some combination of the three. The court of appeals accepted this view upon the ground that the Fifth Amendment, read with the First, requires Congress to treat alike all those whose opposition to war is based upon "a pervading commitment to a moral ideal" (R. 36).

The decision of the court of appeals is plainly inconsistent with the unanimous decisions of this Court in the *Selective Draft Law Cases*, 245 U.S. 366, 389–390, *Goldman* v. *United States*, 245 U.S. 474, *Kramer* v. *United States*, 245 U.S. 478, and *Ruthenberg* v. *United States*, 245 U.S. 480; indeed every court which has considered the question, including the court below, has upheld the constitutionality of Section 6(j). *United States* v. *Bendik*, 220 F. 2d 249 (C.A. 2);[4] *United States* v. *Delime*, 223 F. 2d 96 (C.A. 3); *George* v. *United States*, 196 F. 2d 445 (C.A. 9), certiorari denied, 344 U.S. 843; *Clark* v. *United States*, 236 F. 2d 13 (C.A. 9), certiorari denied, 352 U.S. 882; *Etcheverry* v. *United States*, 320 F. 2d 873 (C.A. 9), certiorari denied, 375 U.S. 930; *Peter* v. *United States*, 324 F. 2d 173 (C.A. 9), pending on writ of certiorari, No. 29, this Term.

Two kinds of attack are leveled at the constitutionality of Section 6(j). One denies the power of Congress to exempt from combatant training and service that class of persons who oppose participation in war upon "religious" grounds, without exempting other objectors. The argument assumes that the definition of "religion" in Section 6(j) is unexceptionable and that the statute draws no improper

[4] The court below purported to distinguish its earlier decision in *Bendik* on the ground that there the court had not considered whether Section 6(j) distinguished among religious groups.

distinction between different religions. See Kurland, *Religion and the Law* (1962) 37–38. The second line of attack is that approved by the court of appeals. It challenges the particular line of distinction drawn in Section 6(j), not as aid to religion violating the First Amendment, but as an unreasonable classification because, as the court defines "religion," "a line such as is drawn by the 'Supreme Being' requirement between different forms of religious expression cannot be permitted to stand consistently with the due process clause of the Fifth Amendment" (R. 38).

We deal separately with the two lines of analysis.

I

THE FIRST AMENDMENT PERMITS CONGRESS TO ACCOMMODATE THE FREE EXERCISE OF RELIGION WITH THE NEEDS OF NATIONAL DEFENSE BY ASSIGNING TO NONCOMBATANT SERVICE OR NATIONAL SERVICE OUTSIDE THE ARMED FORCES PERSONS WHO, BY REASON OF BELIEF IN A DIVINE OBLIGATION, ARE OPPOSED TO PARTICIPATION IN WAR IN ANY FORM

The cornerstone of any system of universal military service and training must be equality of obligation to the Nation. Those who are rendering more essential service in a civilian capacity may be deferred without violating that principle because they are fulfilling the obligation. A few compassionate exceptions, just in the eyes of the community, may also be acceptable. But the principle of equality of obligation, save in exceptional instances, is essential to an effective selective service law.

To impose an obligation to participate in combatant training and service upon a person whose religious beliefs forbid him to participate in war in any form interferes in a substantial sense with religious liberty.[5] He is ordered to disobey what to him is a divine obligation superior to mere duties among men and if he disobeys, as he will, he is punished for obeying the religious duty. Section 6(j) attempts to accommodate the principle of equality of patriotic obligation with religious liberty by assigning the religious objector to noncombatant service or, if that too be inconsistent with his religious scruples, by assigning him to other national service.

We consider later the question whether Congress has drawn a permissible line in attempting to accommodate recognition of the claims of religious liberty with the needs of national defense. The fundamental question at the threshold, however, is whether that accommodation is a permissible objective under the First Amendment.

The power of Congress to make such an accommodation is squarely sustained by prior decisions. In the *Selective Draft Law Cases,* 245 U.S. 366, the Court upheld the Selective Draft Law of 1917, which included an exemption for persons who were mem-

[5] In arguing, as we do, that Congress may properly seek to avoid such interference, we intend no implication that Congress is constitutionally required to grant any exemption at all. This Court has stated the contrary. See *United States* v. *Macintosh*, 283 U.S. 605, 623–624 (dictum), overruled on other grounds, *Girouard* v. *United States*, 328 U.S. 61. See also *Hamilton* v. *Regents of the University of California*, 293 U.S. 245, 265–268 (concurring opinion of Mr. Justice Cardozo).

bers of religious sects opposed to war in any form, provided their own religious convictions were the same. The Court unanimously[6] held that (*id.* at 389–390):

> [W]e pass without anything but statement the proposition that an establishment of a religion or an interference with the free exercise thereof repugnant to the First Amendment resulted from the exemption clause of the act * * * because we think its unsoundness is too apparent to require us to do more.

The argument rejected was that Congress could not constitutionally favor religion as a whole, nor favor religious men who belonged to particular sects over other religious men.[7]

A week later, the Court reaffirmed this determination in *Goldman* v. *United States,* 245 U.S. 474, *Kramer* v. *United States,* 245 U.S. 478, and *Ruthenberg* v. *United States,* 245 U.S. 480, by merely citing the *Selective Draft Law Cases.* In *Goldman* and *Kramer,* the argument advanced was the same as in the earlier case.[8] In *Ruthenberg,* the exemption was

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[6] The opinion was written by Chief Justice White. The remainder of the Court consisted of Justices McKenna, Holmes, Day, Van Devanter, Pitney, McReynolds, Brandeis, and Clarke.

[7] See Brief on Behalf of the Plaintiffs-in-Error in No. 702, Oct. Term 1917, pp. 33–40, adopted by reference in Brief on Behalf of the Plaintiffs-in-Error in No. 681, Oct. Term 1917, p. 9. See also Brief for the United States in Nos. 656, 663, 664, 665, 666, 680, 681, 702, 738, pp. 82–83.

[8] See Brief on Behalf of the Plaintiffs-in-Error in No. 702, Oct. Term 1917, pp. 33–40, adopted by reference in Brief on Behalf of the Plaintiffs-in-Error in No. 680, Oct. Term 1917, p. 9.

held constitutional over the claims that it violated freedom of religion (1) to allow an exemption to objectors who opposed war and belonged to a sect which opposed all war, but not to religious objectors who did not belong to such a sect; and (2) to give an exception to objectors who based their position on religious conviction, but not to those whose views came from within themselves.[9] Accord, *Yanyar* v. *United States,* 246 U.S. 649;[10] *Stephens* v. *United States,* 247 U.S. 504.[11]

Thus, the Court had presented to it the exact question involved in this case—whether granting an exemption to persons who will not participate in war because of religious convictions, while failing to grant one to non-religious conscientious objectors violates the First Amendment. Indeed, if anything, the issue in the earlier cases was presented in a more difficult context since the World War I statute restricted the exemption to members of religious sects and made no provision for the unaffiliated believer. Nevertheless, the Court rejected the contention as frivolous.

On principle the earlier decisions are correct. An exemption for religious conscientious objectors does not constitute an establishment of religion, nor does it grant forbidden preferences to the religious or impose disabilities upon non-religious men. Plainly, the

[9] See Brief for Ruthenberg, et al. in No. 656, Oct. Term 1917, pp. 1–9.

[10] See Motion by the United States to Dismiss or Affirm, Nos. 767, 768, Oct. Term 1917, p. 3.

[11] See Brief of Plaintiff-in-Error Contra Motion to Dismiss or Affirm, No. 813, Oct. Term 1917, pp. 2–5.

exemption does not interfere with, much less prohibit, the full freedom of non-religious objectors to refuse to believe in or practice religion. They are not subjected to invidious discrimination or disqualification. The sole effect upon them is that they, like millions of others, do not receive an exemption available to religious objectors. The question narrows, therefore, to whether Congress, by such an exemption, grants a preference for religion in violation of the purposes of the First Amendment. Cf. *Everson* v. *Board of Education*, 330 U.S. 1, 15–16.[12]

There is no basis for an argument that since the exemption runs only to persons who believe in a Supreme Being it might conceivably influence persons to become religious. It is scarcely conceivable that anyone would adopt or change his religion in an effort

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[12] It is significant that Leo Pfeffer, an exponent of a broad interpretation of the establishment clause, believes that the exemption for religious conscientious objectors is constitutional. Pfeffer, *Church, State, and Freedom* (1953) 509–510.

Numerous other books and law reviews have commented on this issue. Those supporting the constitutionality of Section 6(j) include: Katz, *Religion and American Constitutions* (1964) 20–21; Drinan, *Religions, the Courts and Public Policy* (1963) 15–20. Other articles assume constitutionality. Waite, *Section 5(g) of the Selective Service Act, as Amended by the Court*, 29 Minn. L. Rev. 22 (1944); Russell, *Conscientious Objector Recognition*, 20 Geo. Wash. L. Rev. 409 (1952). As to books and articles taking the position that the statute is unconstitutional, see Kurland, *Religion and the Law* (1962) 37–38; Donnici, *Government Encouragement of Religious Ideology*, 13 J. of Pub. L. 16 (1964); Conklin, *Conscientious Objector Provision*, 51 Geo. L. J. 252 (1963) (criticizing *Torcaso* v. *Watkins*, 367 U.S. 488, but saying that, if that decision is followed, Section 6(j) is invalid); Freeman, *Exemptions from Civil Responsibility*, 20 Ohio St. L. J. 437 (1959).

to be assigned, as a conscientious objector, to some non-combatant form of service; if the facts became known, such a man could not qualify for the exemption. Moreover, persons such as respondent are by definition so unyielding in moral opposition to war that they are willing to suffer imprisonment rather than bear arms. Surely, they would not be likely to change their views of religion so lightly; if they would, there is no good reason to credit their convictions as to war. In every substantial sense Section 6(j) takes men as it finds them and calls upon them for that form of national service that does the least violence to their religious beliefs.

The wall between church and state erected by the establishment clause does not require the government to ignore religious beliefs in the framing of legislation dealing for secular purposes with conduct conforming, in some instances, to the dictates of religion. The aim of the exemption, as we have seen, is to alleviate the harshness which would result if individuals were compelled to flout the commands of their religion in order to obey those of the State. For the State to avoid such an intrusion upon freedom of religion is an effort to remain neutral—to avoid the penalization of religion, rather than to prefer it.[13]

[13] In *Torcaso* v. *Watkins*, 367 U.S. 488, a disability was imposed upon a non-believer *for his views*. That, of course, is quite another matter. *Torcaso* obviously does not mean that a non-believer is exempt from the obligations which fall upon citizens generally because his convictions are inconsistent with the laws which impose them. His amenability to such regulation does not raise a First Amendment issue.

A significant number of recent decisions of this Court recognize, and even require, that such accommodations be made in order to minimize conflict between religious belief and governmental regulation.

Girouard v. *United States*, 328 U.S. 61, held that Congress had not barred from citizenship an alien who refused, for religious reasons, to swear that he is willing to bear arms. It is not entirely clear from the opinion whether the Court held (1) that Congress had not authorized a requirement of willingness to bear arms as a condition of citizenship; or (2) that Congress authorized the imposition of such a requirement but did not intend it to apply to religious conscientious objectors. The latter, however, appears to be the correct interpretation since the Court repeatedly referred to freedom of religion. For example, it stated (*id.* at 68):

> The struggle for religious liberty has through the centuries been an effort to accommodate the demands of the State to the conscience of the individual. The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. Throughout the ages, men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion guaranteed by the First Amendment is the product of that struggle.

It is of course implicit in that statement that such accommodations of religious liberty do not violate the establishment clause.

In *Everson* v. *Board of Education, supra*, the Court again recognized the power of government to accommodate religion in order to avoid interference with freedom of religion, declaring (330 U.S. at 18):

> Of course, cutting off church schools from [various municipal services such as police and fire protection], so separate and so indisputably marked off from the religious function, would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

The Court then upheld the payment of bus fares to children attending parochial, as well as public, schools.[14]

Subsequently, in *Zorach* v. *Clauson*, 343 U.S. 306, the Court sustained a public school program releasing children to attend religious instruction in their own places of worship. There, the Court said (*id.* at 313–314):

> We are a religious people whose institutions presuppose a Supreme Being. We guarantee

[14] In his dissenting opinion, in which he said that such State aid to religion was unconstitutional, Mr. Justice Rutledge stated that "the only serious surviving threat" to the separation of church and state required by the First Amendment was "through use of the taxing power to support religion." 330 U.S. at 44.

> the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. * * * When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. * * * The government must be neutral when it comes to competition between sects. It may not trust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction.

As examples, the Court pointed to excuses from school for religious observances such as Catholic Days of Obligation, Yom Kippur, or baptisms. The Court distinguished *McCollum* v. *Board of Education,* 333 U.S. 203, where it had held unconstitutional a program of religious instruction in the public schools, on the ground that "released time" outside the schools was merely an accommodation of religion. The Court nowhere suggested that non-religious parents had the right to have their children released for non-religious purposes; indeed, the released-time program before the Court clearly did not allow for this. 343 U.S. at 308–309, note 1. Thus, the Court upheld an accommodation of religion even though no equivalent ex-

emption from attendance was extended to non-religious persons.

In the Sunday Blue Law cases (*McGowan* v. *Maryland*, 366 U.S. 420, *Two Guys From Harrison-Allentown, Inc.* v. *McGinley*, 366 U.S. 582, *Braunfeld* v. *Brown*, 366 U.S. 599, and *Gallagher* v. *Crown Kosher Super Market*, 366 U.S. 617), this Court upheld the statutes on the ground that they had a secular, not a religious, purpose. However, Mr. Justice Brennan, in his concurring and dissenting opinion in *Braunfeld*, concluded that the free exercise clause prevented Orthodox Jews from being required to close their businesses on Sunday since their religion prescribed that they be closed on Saturday and two days' closing would cause them serious economic injury. In doing so, he rejected the claim that such an exemption from the blue laws for persons of one religion would constitute an establishment (366 U.S. at 615):

> Non-Sunday observers might get an unfair advantage, it is said. A similar contention against the draft exemption for conscientious objectors (another example of the exemption technique) was rejected with the observation that "its unsoundness is too apparent to require" discussion. *Selective Draft Law Cases*, 245 U.S. 366, 390 (1918). However widespread the complaint, it is legally baseless * * *.

Thus, Mr. Justice Brennan relied on the decision of this Court upholding the predecessor to the exemption

provision involved in this case to demonstrate that the government, in the interest of religious freedom, may, and indeed in some instances *must,* make a special accommodation to religious belief.[15]

The plurality opinion of the Chief Justice disagreed with Mr. Justice Brennan's view and stated that the States were not required by the free exercise clause to grant Orthodox Jews an exemption from the blue laws. 366 U.S. at 608–609. However, it never suggested that, if an exemption were granted—as 21 of the 34 States which had Sunday blue laws in fact did (see 366 U.S. at 614, note 1)—it would be unconstitutional under the establishment clause. Quite the contrary, the Court indicated that "this may well be the wise solution to the problem." *Id.* at 608.

Mr. Justice Frankfurter, joined by Mr. Justice Harlan, similarly rejected the contention of the Orthodox Jews on the ground that "[t]heir 'establishment' contention can prevail only if the absence of any substantial legislative purpose other than a religious one is made to appear." 366 U.S. at 468. He then cited the *Selective Draft Law Cases* which held that the World War I version of Section 6(j) did not violate the First Amendment. And finally he stated that "[h]owever preferable, personally, one might deem

[15] Mr. Justice Stewart in his dissenting opinion, said that he agreed "with substantially all" of Mr. Justice Brennan's opinion. 366 U.S. at 616. For these same reasons, Justices Brennan and Stewart dissented in *Gallagher* v. *Crown Kosher Super Market, supra,* 366 U.S. at 642.

such an exception [for those who observed the Saturday Sabbath]," he could not "find that the Constitution compels it" since several considerations provided reasonable justification for the legislature's refusal to adopt it. 366 U.S. at 520. Thus, all of the Justices who commented on the issue [16] agreed that an exemption from the blue laws limited to persons who, because of religious belief, were required to close their businesses on Saturday would not violate the First Amendment.[17]

In his concuring opinion in *Abington School District* v. *Schempp,* 374 U.S. 203, 295, which held that the Bible may not be read and the Lord's Prayer may not be recited as part of the public school curriculum, Mr. Justice Brennan again referred to the interrelationship of the free exercise and establishment clause:

> Nothing in the Constitution compels the organs of government to be blind to what everyone else perceives—that religious differences among Americans have important and pervasive implications for one society. Likewise nothing in the Establishment Clause forbids the application of legislation having purely secular ends in such a way as to alleviate burdens upon the free exercise of an individual's religious beliefs. Surely the framers would never have understood that such a construction

[16] Mr. Justice Douglas, in dissenting, did not reach the issue of a special exemption for Sabbatarians since in his view any requirement that businesses close on Sunday violated the free exercise and establishment clauses. See 366 U.S. at 577–578.

[17] It has recently been proposed that Congress grant to Amish Mennonites an optional exemption from the social security self-employment tax. See Cong. Rec., September 2, 1964 (daily ed.), pp. 20699–20702.

> sanctions that involvement which violates the Establishment Clause. Such a conclusion can be reached, I would suggest, only by using the words of the First Amendment to defeat its very purpose.[18]

Similarly, Mr. Justice Goldberg, joined by Mr. Justice Harlan, stated in a concurring opinion (374 U.S. at 306):

> Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require it to do so. * * * [T]he required and the permissible accommodations between state and church frame the relation as one free from hostility or favor and productive of religious and political harmony, but without undue involvement of one in the concerns or practices of the other.

And Mr. Justice Stewart in his dissenting opinion emphasized the necessity of avoiding use of the establishment clause so as to interfere with the free exercise of religion, which is also guaranteed by the First Amendment. *Id.* at 308–320.

Finally, in *Sherbert* v. *Verner,* 374 U.S. 398, this Court held that a State may not deny unemployment compensation benefits to a person who will not work Saturdays because of her religious beliefs, on the ground that she refused employment which required

[18] The majority opinion did not consider this point.

such work. This holding was based on the free exercise clause of the First Amendment and therefore did not apply to persons of religious faiths who were not forbidden to work on Saturdays or to the nonreligious. The Court explicitly rejected the argument that this holding itself constituted an establishment of religion on the ground that it "reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall." *Id.* at 409. Mr. Justice Stewart, concurring in the result, agreed that the State was required by the free exercise clause to treat a person differently when her refusal to work is based on religious convictions than when it is grounded on other reasons and that this did not violate the establishment clause. *Id.* at 413–417. Mr. Justice Harlan, joined by Mr. Justice White, dissented on the ground that the free exercise clause did not require the State to make an exception for persons who refused to work because of religious conviction. The opinion went on, however, to say (*id.* at 422–423);

> [I]t would be a permissible accommodation of religion for the State if it *chose* to do so, to create an exception to its eligibility requirements for persons like the appellant. The constitutional obligation of "neutrality" * * * is not so narrow a channel that the slightest deviation from an aboslutely straight course

> leads to condemnation. There are too many instances in which no such course can be charted, too many areas in which the pervasive activities of the State justify some special provision for religion to prevent it from being submerged by an all-embracing secularism. * * *[T]here is, I believe, enough flexibility in the Constitution to permit a legislative judgment accommodating an unemployment compensation law to the exercise of religious beliefs such as appellant's.

Thus, the Court was unanimous on the proposition that, whether or not in a particular situation the State is constitutionally required to do so, it may give an exemption limited to religious persons in order to avoid interference with full freedom of religion.

As we have seen, the decisions of this Court establish that the State and federal governments have considerable discretion in accommodating religion. This power is particularly clear when the legislation is attempting to avoid interference with religious freedom. Indeed, in *Sherbert* v. *Verner,* this Court held that a State was *compelled* by the free exercise clause to provide an exemption for persons of particular religious views even though no exemption was necessary for anyone else. Surely, Congress has equal power to decide to accommodate persons whose religious convictions forbid participation in war.[19]

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[19] That, of course, was the express holding of the *Selective Draft Law Cases*, discussed at pp. 21–22 above.

II

THE DEFINITION OF THE CLASS EXEMPTED FROM COMBATANT SERVICE AND TRAINING BY SECTION 6(j) IS A PERMISSIBLE CLASSIFICATION REASONABLY ACCOMMODATING THE NEEDS OF NATIONAL DEFENSE WITH THE INTEREST IN RELIGIOUS LIBERTY SAFEGUARDED BY THE FIRST AMENDMENT

In judging the constitutionality of the classification which Congress established by Section 6(j) it is essential to keep in full perspective the legislative problem of defining any exemption for conscientious objectors. For the question here is not whether concern for the rights of the individual citizen, as opposed to the collective mass of society, should lead to a policy of exempting all persons who can be said to have conscientious scruples against military service, or whether a personal moral code is as "good" or as "worthy of respect" as a religious conviction based upon belief in a divine obligation. The framing of a draft law involves legislative judgments that the courts may not supersede unless the legislature exceeds its function. Assuming that Congress may constitutionally seek to accommodate the free exercise of religion with the needs of national defense, as we have contended, by assigning religious objectors to war in any form to noncombatant service, then the only remaining justiciable question is whether Congress acted arbitrarily or capriciously, or engaged in invidious discrimination.

The heart of the legislative problem in exempting conscientious objectors has always been to draw a

fair line defining the limits of the exemption in what now seems to us to be a continuum of beliefs ranging from the revealed commands of a fundamentalist God through modern Protestant theology to moral philosophy and ultimately to political judgments based upon the very considerations that must be weighed by the President and Congress in declaring war, raising armies, and appropriating money for the national defense. Nor can the problem be abstracted from its historical evolution among the traditions and fundamental beliefs of the American people.

The polar cases are easy to deal with. The core of the exemption for conscientious objectors is the unwillingness of the Congress, speaking the true will of the American people, to punish as a criminal a man who refuses to perform military service in obedience to what he believes is the command of a God transmitted by divine revelation. The unwillingness of the American people to compel a man to disobey a divine command and yield to a human obligation imposed by government is older than the Nation.[20]

Quite different is the situation of the individual who disavows all religious beliefs (however broadly "religious" be defined) but who studies the contemporary human scene and decides on the basis of political, sociological, and economic considerations that a particular war is wrong, or that all wars are wrong, as a matter of human relations. However firm the

[20] See pp. 41–72 below.

conviction and unalterable the determination not to support the wrong, it is then a human judgment based upon the same materials as the government must canvass in reaching its decision. No State has ever permitted individual citizens to set their political judgments of how to conduct human affairs over the judgment of the community. Respondent's views appear to differ somewhat from this polar position, and we take it that no one is seriously contending that the Constitution requires extending the exemption to anyone with a sincerely held political or social objection to war in any form.

Between the polar cases lies a vast middle ground where the lines between different beliefs and opinions are subtle, wavering, and uncertain. Should one distinguish between him whose religion is purely faith in an unquestionable command of God revealed in the Scripture and his co-religionist of the same creed who reached his convictions solely through the path of logic? Rigid adherence to some definitions of religion would seem logically to exclude those who state that they pray to a Christian God solely because logical analysis demonstrates His existence. For one of the central points in some definitions of religion is that it deals with beliefs lying beyond what can be observed by the senses or demonstrated by logical analysis. Judge Augustus N. Hand evidently had this in mind when he wrote in *United States* v. *Kauten,* 133 F. 2d 703, 708:

> Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his uni-

verse—a sense common to men in most primitive and in most highly civilized societies. It accepts the aid of logic but refuses to be limited by it.

Yet to make that the sole test is open to the objection that it excludes from the category of religious many men who are active communicants in established religious sects.

Similarly, there is a marked difference, from some viewpoints, between the fundamentalist who believes in a personal God up in heaven and the modern Protestant theologian, such as Professor Tillich [21] or Dr. Robinson,[22] who conceive God as the ultimate ground or depth of our being, while, from other viewpoints the differences are immaterial and any space between is occupied by shadings of opinion in which the differences of degree are often scarcely distinguishable.

To move quickly to the other end of the total range, we suggest that there is also no universally acceptable, clear-cut line of distinction between an ethical or moral code, unrelated to religion, and political or social convictions. There have been employers who firmly believed that it was "wrong" to sign a union shop contract because no man should be compelled to join a labor union, and some employers were prepared to sacrifice business advantage to that conviction. Probably none would have claimed religious sanction for their views but a number could sincerely claim that

[21] II Tillich, *Systematic Theology* (1957) 9.

[22] Robinson, *Honest to God* (1963) 45–63.

they acted out of conscience. Here again, however, the line between "conscience" and social or political opinion is only a difference in degree. The problem is no different in separating moral from political objections to war in any form.

We may note parenthetically that there are also practical objections to any exemption of the breadth which respondent urges. It is, to begin with, a rather difficult task to determine when a religious objection is sincerely held. See Smith and Bell, *The Conscientious-Objector Program—A Search for Sincerity,* 19 U. of Pitts. L. Rev. 695. This task would become immeasurably more complicated and difficult if the administrators of the system were called upon to determine whether one seeking an exemption sincerely holds to a moral or ethical creed or code opposed to war. *Id.* at 711. Professor Field, an English student of the problem who has had long experience with the British system, has observed; Field, *Pacifism and Conscientious Objection* (Cambridge University Press, 1945) 4:

> It will be seen, then, that Pacifism or Conscientious Objection is not one single simple creed, but a number of creeds, based on widely different and sometimes diametrically opposed general principles. This obviously makes the task of critical evaluation particularly difficult. Indeed, it would not be too much to say that criticism of Pacifism is impossible; there can only be criticism of various pacifist arguments, some of which have little or no connection and may, indeed, be in contradiction with one another.

We do not urge that difficulties of this kind constitute an insuperable objection to a law granting broader exemptions than those presently provided. We make only the point that the difficulties are surely no less substantial than under the statutory test.

The difficulty in drawing any line is enhanced by the fact that the "importance" of any distinction in this area almost inescapably depends upon the subjective views of the observer. The fundamentalist, for example, sees little difference between the Protestant theologians exemplified by Professor Tillich and Dr. Robinson, on the one side, and the humanists like Julian Huxley, on the other,[23] but Mr. Huxley and Dr. Robinson see a world of difference.[24] Again, a devout believer in a Supreme Being might see no significant difference between a purely personal moral code condemning all forms of violence and purely political objections to war and the recruitment or training of armies in an age of nuclear bombs.

Despite the difficulty some line has to be drawn in the drafting and in the administration of a universal military service law, unless the polar cases are to be lumped together and a choice made either to deny exemption to all conscientious objectors or else to allow any individual to avoid combatant service if his sincere political convictions make him opposed to war in any form. Perhaps a line could have been drawn which distinguished moral philosophy from political economy. Possibly the test might be framed

[23] See Huxley, *Religion Without Revelation* (1927); Huxley, *Essays of a Humanist* (1964).

[24] See *id* at 218-222; Robinson, *Honest to God*, *supra*, pp. 127-129.

in terms of conscience as opposed to political, economic, or sociological opinion. The line was drawn, by the body to which the responsibility for raising armies was confided, in terms of the difference between human and divine obligations. It is not ground for invalidating the statute that a court concludes, even rightly, that the line might better be drawn at another point. Nor is it material that the distinction between two borderline cases, when they are viewed in isolation, may seem hardly more than fiat. "Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." Holmes, J., dissenting in *Louisville Gas Co.* v. *Coleman*, 277 U.S. 32, 41. The Act does not offend the Fifth Amendment unless it is shown that Congress acted arbitrarily and capriciously or engaged in invidious discrimination.

We submit that the case is just the contrary—that the definition of the class exempted from combatant service by Section 6(j) plainly appears, when the foregoing problems are kept in mind, to be a reasonable method of accommodating the interest in religious liberty with the needs of national defense. That conclusion, we submit, is confirmed by four further considerations.

A. THE HISTORICAL EVOLUTION OF THE DEFINITION OF A RELIGIOUS OBJECTION TO PARTICIPATION IN WAR IN ANY FORM SHOWS THAT IT IS NEITHER ARBITRARY NOR INVIDIOUS

Section 6(j) is the culmination of years of experience. The practice of exempting from military service "conscientious objectors" opposed to war in any form is as old, in the United States, as military conscription. The scope of the exemption has changed from time to time but, with one exception not authorized by Congress, it has always been limited to those whose opposition was based upon religious belief.

1. Pre-Civil War

Until the Civil War, when both the federal government and the Confederacy adopted national conscription, the only compulsory military service in this country was in the muster of the State militia. Conscripted militia service was employed in the various colonies to provide defense against Indian attack. Conscientious objectors, during this early period, consisted principally of members of four historic "peace churches" who were among the earliest immigrants to the North American continent: the Religious Society of Friends, or Quakers; the Church of the Brethren, whose members were sometimes called Dunkards; the Mennonite Church, which includes the Amish and the Hutterites; and the Moravians, or United Brethren. At first, members of those churches were sometimes imprisoned or subjected to heavy taxes or fines because of their refusal to render service, but on other occasions they were granted exemp-

tions. *Selective Service System Monograph No. 11, Conscientious Objection* (1950) 29.

Gradually, more and more of the State legislatures provided relief to persons whose religious convictions prohibited participation in war and permitted them to serve in noncombatant service. Of the original thirteen colonies, the first to provide relief were Massachusetts (1661), Rhode Island (1673), and Pennsylvania (1757).[25] *Monograph No. 11*,[26] p. 30; Selective Service Special Monograph No. 1, *Backgrounds of Selective Service* (1947), vol. II, part 6, p. 73; *id.* part 12, pp. 13–17; Godcharles II, *Pennsylvania, Political, Governmental, Military* (1933) 4.

In granting the exemptions, the State legislatures were aware of two facts. The first was that pacificism was an essential part of the tenets of the "peace churches," based upon a literal reading of the Bible. Thus, in 1775, the Quakers, in voicing their opposition to a proposal in the Pennsylvania House of Representatives that the exemption for religious scruples be modified, stated that their religious principles were "founded on the Example and express Injunction of Christ our Lord and Lawgiver." *Monograph No. 11*, p. 35; *Pennsylvania Archives*, 8th series, vol. III (1935) 7326–7330. Similarly, the Annual Conference

[25] Before the State legislature acted, Parliament in 1749 exempted the Germans of Pennsylvania from participation in the Indian wars on the ground of religious scruples. Stokes and Pfeffer, *Church and State in the United States* (1964) 474.

[26] The first reference in this and similar succeeding citations is to the monograph. The second reference is to the citation given in the monograph.

of the Brethren, when asked in 1817 whether members could "go on the muster ground or not," replied that a member who did so "could not be in full fellowship with the church, for the Savior said to Peter, 'Put up thy sword into his place; for all they that take the sword, shall perish with the sword.'" *Monograph No. 11,* p. 39; Church of the Brethren, *Minutes of the Annual Meetings, 1778–1909* (Brethren Publishing House, 1909) 40–41.

Second, the early legislators were aware that under no circumstances, even to defend their lives and property, would practicing members of the peace churches take up arms. There were striking illustrations. In one instance, thirty Dunkards were massacred by Indians in less than forty-eight hours, but they nevertheless refused "a stirring appeal" from a lieutenant-colonel of militia to arm themselves for their own defense. In another instance, a Dunkard, in defense of his mill and his life, killed two Indians who were stragglers from a group which had massacred a Dunkard community; as a result of his action, he was excommunicated from his church and forced out of business by a boycott by his former co-religionists. *Monograph No. 11,* pp. 32–33; Jones, *History of the Early Settlement of the Juniata Valley* (Henry B. Ashmead, 1856) 208–209, 215–216.

It may be that the early exemptions from militia service did not reflect respect for religious scruples so much as recognition that any attempt to force the members of the peace churches to bear arms was doomed to fail. In any event, the exemptions were limited in scope, freeing the objector from the duty of

bearing arms but making no further accommodation to his pacifist principles. Thus, an early Pennsylvania statute (March 29, 1757), while it permitted members of the peace churches to appear at militia alarms without weapons, nevertheless required them to obey the commands of officers and perform generally helpful services, including "extinguishing fires" and "conveying intelligence as expresses or messengers." *Monograph No. 11*, p. 30; II Godcharles, *Pennsylvania, Political, Governmental, Military, supra*, p. 4. Later enactments coupled the exemption with a requirement that the person relieved supply a substitute or the money necessary to hire one (see the statutes cited in *Hamiton* v. *Regents of the University of California*, 293 U.S. 245, 266–267 (Mr. Justice Cardozo concurring)). This was done despite the contention of the peace churches that their creeds forbade the payment of a commutation fee as well as the rendering of personal military service. For example, during the Indian Wars, the Dunkards "refused in the most positive manner to pay a dollar to support those who were willing to take up arms to defend their homes and their firesides, until wrung from them by the stern mandates of the law, from which there was no appeal." *Monograph No. 11*, p. 32; Jones, *History of the Early Settlement of the Juniata Valley, supra*, pp. 208–209.

Similarly, despite the opposition of the Quakers that they "could not for Conscience Sake bear Arms, nor be concerned in warlike Preparations, either by personal Service or by paying any Fines, Penalties or Assessments, imposed in Consideration of our Ex-

emption from such Services," the Pennsylvania House of Representatives, in 1775, modified the pre-existing exemption to require all those who did not serve in the "military Association" of the Province "to contribute an Equivalent to the Time spent by the Associators in acquiring the military Discipline." *Monograph No. 11,* pp. 35–36; *Pennsylvania Archives, supra,* pp. 7351. The requirement is an interesting historical antecedent of the present practice of exempting religious objectors from combatant positions but assigning them to other forms of national service under the Selective Service Act. In a substantial sense both adapt the form of compulsory service to the beliefs of the objector instead of granting an exemption.

Although the concept of an exemption for religious objectors originally appears to have sprung primarily from practical considerations, by the onset of the Revolution it had gained acceptance on the basis of toleration of religious beliefs. Thus, in 1775 the Continental Congress adopted a resolution stating that it intended no violence to the consciences of those "who from Religious Principles cannot bear Arms in any case," but urging such people to make such "services to their oppressed country, which they can consistently with their Religious Principles." *Monograph No. 11,* pp. 33–34; X *Minutes of the Provincial Council of Pennsylvania from the Organization to the Termination of the Proprietary Government* (Theo. Fenn and Co., 1852) 293. In 1776, the Maryland Convention authorized the Committees of Observation to remit in whole or in part the fines as-

sessed by them for failure to enroll in the militia, and recommended that in doing so the Committees "make a difference between such persons as may refuse from religious principles, or other motives." *Monograph No. 11,* p. 37; *The American Archives,* 4th series, vol. VI (M. St. Clair Clark and Peter Force, 1846) 1504.

When the Bill of Rights first came under consideration in the House of Representatives, James Madison proposed that "no person religiously scrupulous shall be compelled to bear arms." I Annals of Congress 749. The chief argument for the proposal was offered by Representative Boudinot, who pointed out that those opposed to bearing arms on the basis of their religion "would rather die than use them" and "adverted to several instances of oppression on this point" that occurred during the Revolutionary War. *Id.* at 767. Representative Scott, on the other hand, opposed the provision because it might be construed as extending to those who were not religious (*ibid.*):

> There are many sects I know, who are religiously scrupulous in this respect; I do not mean to deprive them of any indulgence the law affords; my design is to guard against those who are of no religion. It has been urged that religion is on the decline; if so, the argument is more strong in my favor, for when the time comes that religion shall be discarded, the generality of persons will have recourse to these pretexts to get excused from bearing arms.

Representative Gerry, who feared that the proposal in the form presented might vitiate the provision to which it was attached (what is now the Second Amend-

ment right of the people to keep and bear arms), wished to restrict the exemption to "persons belonging to a religious sect scrupulous of bearing arms." I Annals of Congress 750. Representative Benson opposed the provision because (*id.* at 751):

> No man can claim this indulgence of right. It may be a religious persuasion, but it is no natural right, and therefore ought to be left to the discretion of the Government. If this stands part of the Constitution, it will be a question before the Judiciary on every regulation you make with respect to the organization of the militia, whether it comports with this declaration or not. It is extremely injudicious to intermix matters of doubt with fundamentals.
>
> I have have no reason to believe but the Legislature will always possess humanity enough to indulge this class of citizens in a matter they are so desirous of; but they ought to be left to their discretion.

He therefore moved to strike the provision from the proposed amendment, but his motion failed by the narrow margin 24 to 22. *Ibid.* Representative Jackson proposed amending the provision by adding the words "upon paying an equivalent," and Representative Smith of South Carolina thought that those excused should be required to find a substitute. *Id.* at 750. Neither proposal was put to a vote, but the words "in person" were added to the clause prior to its being adopted by the House. *Id.* at 767.

The provision was not accepted by the Senate and never became part of the Constitution. There is no account of the Senate debate, and one can only specu-

late as to whether its rejection of the provision was based upon agreement with Representative Scott's view that the right to a non-religious exemption might thereby be established or agreement with Representative Benson's view that the matter should be left to legislative discretion. It clearly appears, however, from the arguments on the proposal, that to the extent that there was sentiment for making exemption for conscientious objection a constitutional right, it arose from a desire to accommodate only those who believed they were prevented from bearing arms by the requirements of their religion.

At the end of the War of 1812, while the outcome of peace negotiations was awaited, bills authorizing the President to call up the militia of the States and territories were passed by both the Senate and the House of Representatives (although no law was passed, since the Treaty of Ghent was received before the two houses could resolve their differences). Included in the House version was a section, proposed by Representative Lewis of Virginia and adopted, without debate "by a large majority," which provided (28 Annals of Congress 774–775):

> That every person who is a member of any religious sect or denomination of Christians,[27] conscientiously scrupulous of bearing arms, shall be exempted from the performance of the duties required by this act, by paying his due proportion of the amount contracted to be paid by the class in which he is concluded, according

[27] At that time, there were probably no non-Christian religions in the United States which were opposed as a matter of doctrine to all wars.

> to the provision of the fourth section of the act; or, in case there shall be a draught in such class, by paying to the person draughted such sum as shall be ascertained by the commanding officer of the company, so that the sum shall not exceed three months' pay; and the payment of such sum of money, in either case, shall be considered as entitling such person to an exemption from all the duties required by this act.

Representative Lewis stated that he offered the amendment because his own State of Virginia gave no exemption "on account of religious faith and conscientious scruples," and the practice had grown there of calling up non-resisters, court-martialing them when they refused to serve, assessing heavy fines, and then placing them in the next class and repeating the process, until they were reduced to ruin. 28 Annals of Congress 772–773. He stated that justice required an exemption for persons of religious scruple because (*id.* at 774):

> [A]s to personal service in arms, if any man conscientiously believed it was forbidden by the voice of God, no human tribunal had the right to force such a man to violate his religion and his conscience, and to stain his hands with human blood.

2. The Civil War

At the start of the Civil War, the draft was regulated by the States in both the North and the South. *Monograph No. 11,* p. 43. North Carolina provided in 1861 for an exemption for persons who have "religious scruples" against bearing arms, and Virginia provided in 1862 for such an exemption if "the tenets

of the church to which [the] applicant belonged" prohibited military service. *Monograph No. 11,* pp. 43–44; N.C. Public Laws, 2d Extra Sess. 1861, pp. 23–24; Acts of the General Assembly of Va. (1862), pp. 50–51.

The first federal conscription laws (as contrasted to laws providing for the calling up of the State militia) were enacted during the Civil War. The Confederacy did likewise. The original statutes enacted by both sides established a general exemption which could be obtained by furnishing a substitute or providing the money to hire one, but made no specific provision for exemptions for conscience. *Monograph No. 11,* pp. 41, 45. Within six months of its adoption of such a statute, however, the Confederate Congress extended an exemption by name to members of the "peace churches"—the Quakers, Dunkards, Nazarenes, and Mennonites—"in regular membership in their respective denominations" if a substitute was furnished or a tax of five hundred dollars paid into the public treasury. Public Laws of the Confederate States of America, 1st Cong., 2d Sess., ch. 45 (October 11, 1862).[28] Similarly, the federal statute was superseded by a statute which provided (13 Stat. 9):

> That members of religious denominations, who shall by oath or affirmation declare that they are conscientiously opposed to the bearing of arms, and who are prohibited from doing so by the rules and articles of faith and practice of said religious denominations, shall, when drafted into the military service, be considered non-combatants, and shall be assigned by the

[28] The provisions of the First Amendment were adopted *in haec verba* by Article I, Section 9, Clause 12 of the Confederate Constitution.

> Secretary of War to duty in the hospitals, or to the care of freedmen, or shall pay the sum of three hundred dollars to such person as the Secretary of War shall designate to receive it, to be applied to the benefit of the sick and wounded soldiers: *Provided*, That no person shall be entitled to the benefit of the provisions of this section unless his declaration of conscientious scruples against bearing arms shall be supported by satisfactory evidence that his deportment has been uniformly consistent with such declaration.

Both Confederate and Union statutes continued the historic policy of exempting only those objectors whose membership in religious sects taught them that they were forbidden to bear arms by divine command. The legislative history of the federal statutes makes the point explicit. Thus, Congressman Garfield stated that he was "willing to exempt men who, from their religious creed, were absolutely prohibited from engaging in war" (63 Cong. Globe 576), and Senator Doolittle spoke against "compelling members of religious denominations by whose faith and creed it is regarded as a sin against God to bear arms even in self-defense, to go into the ranks to do military service" (*id.* at 208). Senator Wilson observed that Quakers, as a class, had proved their conscientious opposition to bearing arms "by more than one hundred years of profession and practice," and voiced approval for the proposal which he understood to grant exemptions to those "who belong to a religious denomination of which opposition to bearing arms is a part of the faith and creed." *Id.* at 206. Senator Saulsbury stated that he would not require Quakers to do

military duty "when they have been brought up from their early childhood in opposition to bearing arms" (*id.* at 204), and Senator Anthony noted that while the opinion of the Quakers on the subject of military participation "may seem very absurd * * * they are opinions that have been entertained for two hundred years by as intelligent men as have ever spoken the English language, and men have borne every persecution that the old martyrs ever bore in defense of these principles—educated, intelligent men; and I think we ought to respect them" (*id.* at 205). Senators Ten Eyck and Doolittle also took note of the persecution that Quakers had borne because of their refusal, on religious grounds, to do military service (*id.* at 205, 208), and Senator Lane stated that a Quaker could not be forced into the ranks of the Army, and that if he were "he would be worthless as a soldier" (*id.* at 206).

One exchange in particular underlines the fact that Congress intended that exemptions extend only to those who were directly forbidden by their religion to bear arms, and not to those who were pacifists for other reasons. Representative J. C. Allen offered an amendment extending the exemption to "any person who shall by oath or affirmation declare that they are conscientiously opposed to the bearing of arms." In its support, he contended (63 Cong. Globe 576):

> It seems to me that we exonerate a class of individuals who are conscientiously opposed to bearing arms simply because they belong to a particular religious society whose articles of faith prohibit it, we ought to extend the exemp-

> tion so as to embrace all who have conscientious scruples on the subject. I cannot understand why it is that mere membership in a particular religious society should exempt a man because he happens to have conscientious scruples. It is not with the articles of faith of religious societies that we have to do, but with the conscience. The mere fact that a man has cast his lot with the Quakers, the Moravians, or the Dunkers ought not to exonerate him unless we exonerate those who have conscientious scruples against bearing arms who may belong to some other religious society, or to none whatever.

In reply, Representative Grinnel pointed out that the opposition of Quakers and other similar sects to bearing arms arose not from mere scruple, but from beliefs traditionally and tenaciously held (*ibid.*):

> If you examine the conscription bill enacted in the rebellious States, you will find that even there, having found the Quakers would not fight, they exempted them. Thus even the demons of rebellion do not now drag into their service the Quakers. In fact they could not. There is no power that could compel them effectively to bear arms. Their history shows that for more than two hundred years no nation has ever succeeded in bringing that denomination into the ranks as fighting men. Their religious conviction and zeal are stronger than the chains that would bind them or the dungeons that would confine them. * * * We should not at this day trifle with religious scruples and these men, who have laid the foundations of commonwealths in peace, whose children are reared in principles of peace, who have been always in favor of

> peace and opposed to bloodshed. We cannot put forth any claim to religious and Christian principles if we fail to respect the conscientious scruples of men who have no new-born creed; who have been firm and decided in their principles, and patriotic and just as citizens, ever since the nation has had an existence.

Representative Allen's amendment was thereupon rejected. *Ibid.* Thus it appears that the Civil War Congress rejected the concept that mere opposition to war, even though derived from noble principles, should be sufficient to constitute an excuse from military service. Congress deliberately chose to exempt only those belonging to sects which made non-participation in war a vital part of man's religious obligation.

The one departure which the Civil War statute made from most prior State enactments (as well as from that of the Confederacy) was to abandon the requirement that the exempted person procure a substitute or pay a commutation fee for use in the general military effort. Instead, the commutation fee was to be earmarked for the benefit of the sick and wounded, a purpose to which Quakers and other non-resisters did not object. Senator Harlan observed that it was the Quakers' belief that "[w]e might as well bear arms as hire a man to bear arms in our stead" (63 Cong. Globe 205), and Senator Lane noted that, as a practical matter, it cost the government ten times as much as it received when it tried to collect money from Quakers in lieu of military service (*id.* at 206).

3. World War I

The Selective Draft Law of 1917 abandoned any requirement for the payment of a commutation fee, but otherwise adopted the approach followed in prior legislation. The statute provided (40 Stat. 78):

> [N]othing in this Act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations, but no person so exempted shall be exempted from service in any capacity that the President shall declare to be noncombatant * * *.

Senator Thomas offered an amendment which would have deleted the requirement of membership in a "well-recognized religious sect or organization," thereby extending the exemption to "any person who is conscientiously opposed to engaging in such service." 55 Cong. Rec. 1478. He explained (*id.* at 1473):

> I want * * * to emphasize what seems to be one of the gravest injustices of this exemption section. I refer to that part of it which is designed to exempt from the operations of the bill those who have conscientious scruples against

> war, and then confining the exemption to those who, having such scruples, are members of denominations of which that is one of their articles of faith. * * *
>
> I am unable to perceive, Mr. President, how and by what process of reasoning a man who is conscientiously opposed to war and not a member of a religious denomination must submit to the requirements of this measure, while his neighbor, possessed of such scruples and belonging to a religious denomination, is made exempt. If we are to exempt that class of people, fundamentally the line of division should not be drawn between those who, in addition to possessing the scruples, are members of churches and those who do not possess any affiliation with churches. Consequently, I want, as soon as this amendment is disposed of, to offer the one to which I now refer, in the hope that that invidious discrimination will be stricken from this bill.

In similar vein, he stated (*id.* at 1478):

> My amendment, however, will equalize this bill and make the exemption as extensive as the thing which it assumes to exempt whether the individual coming within the exemption belongs to a religious denomination or not.

Opposing the amendment as offering too extensive an exemption, Senator McCumber argued that "this provision practically excuses from entering into this war any American citizen who has a conscientious objection against joining the service in this war; and,

of course, it practically annihilates and destroys the whole system of compulsory service provided in the bill." 55 Cong. Rec. 1478. Senator Phelan also rejected the idea that it was necessary or desirable "to equalize all classes of citizens, those who do not belong to any society and those who do belong to societies, which for time immemorial or since their foundation, have been opposed to war." *Ibid.* He quoted from a letter to him from the presiding moderator of the California yearly meeting of the Quakers, which stated that three times each year the members of the society were aksed (*ibid.*):

> Do you maintain the Christian principle of peace and consistently refrain from bearing arms and from performing military service as incompatible with the precepts and spirit of the Gospel?

Senator Phelan emphasized that "[i]f we respect an organization of this kind that has for a long time, not in contemplation of this war or any other war, conscientiously declared its principles, it would be well for us to do it without opening the doors to every slacker who, without any sincere and long-established convictions might declare also his so-called 'conscientious scruples' in order to avoid service." *Id.* at 1478–1479.

After Senator Brady, in speaking against the amendment stated that "[t]he committee gave careful consideration to all of these matters and has presented

here a bill that is workable and fair," the amendment proposed by Senator Thomas was rejected.[29] 55 Cong. Rec. 1479. Thus, Congress in World War I continued the policy of the Civil War Congress—that of exempting only those whose adherence to principles of nonviolence derived from acceptance of the creed of religious denominations which taught that military service was forbidden.

Even though the World War I statute restricted exemptions to members of "well-recognized religious sect[s]," the Selective Service System found it impracticable to compile a list of "recognized" sects and left the matter to the discretion of the local boards. *Second Report of the Provost Marshal General to the Secretary of War on the Operations of the Selective Service System to December 20, 1918,* p. 56. As a result, some boards treated religious and non-religious objectors in the same manner, irrespective of the statute. *Report of the Provost Marshal General to the Secretary of War on the First Draft Under the Selective-Service Act, 1917,* p. 59. Finally, by Presidential regulation dated March 20, 1918, it was ordered that noncombatant service be opened to all inductees who objected to participation in war because

[29] Prior to consideration of the Thomas amendment, the Senate rejected an amendment by Senator LaFollette which would have granted exemptions "[o]n the ground of a conscientious objection to the undertaking of combatant service in the present war." 55 Cong. Rec. 1474, 1478. The Senator admitted that the intent and effect of his proposal was to excuse those persons of German and Austrian ancestry who had "conscientious objections" against going "into the service to fight against their own kith and kin." *Id.* at 1476.

of conscientious scruples, whether or not they were certified by their local boards to be members of a religious sect or organization as defined in the act. *Second Report of the Provost Marshal General supra,* pp. 58–59. This administrative deviation represents the only occasion, so far as we can ascertain, when exemptions were granted because of non-religious opposition to war. However, unlike the present Act, the World War I statute provided for induction of objectors and excused them only from combatant service; and non-combatant service was defined to include the Medical Corps (both front line and rear zone), the Quartermaster Corps (both rear zone and in the United States), and engineer service (both rear zone, including construction of rear line fortifications, and the United States). *Ibid.*

The statutory exemption, as confined to members of "well-recognized religious sects," was held constitutional in the *Selective Draft Law Cases,* 245 U.S. 366, and subsequent decisions discussed at pp. 20–22 above. The constitutionality of the classification was specifically attacked both because it distinguished between objectors who based their views on religious convictions and those whose views came from within themselves and because it distinguished between objectors who belonged to a sect which opposed all war and not to religious objectors who did not belong to such a sect. The precedents, therefore, sustain the classification made by Section 6(j) as well as the power of Congress to seek to accommodate freedom of religion to the needs of national defense. For Section 6(j) is

744-709—64——5

more liberal than the Selective Draft Act of World War I and the classification is less subject to challenge, if it can be challenged at all, on the ground that it discriminates between religions.[30]

4. The Present Act

The exemption provision with which we are here concerned was first adopted in the Universal Military Training and Service Act of 1948. The provision, however, is an outgrowth and refinement of the one adopted in the Selective Training and Service Act of 1940, and can be understood only by tracing in detail the history of the latter statute.

The 1940 law made one radical departure from the statutes under which exemptions had been granted in the past: it abandoned the requirement that the objector belong to a sect or denomination whose creed forbade him to participate in military activities; instead, it extended the exemption to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 54 Stat 889. That change, however, entailed neither an abandonment of the concept of extending exemptions only to those who believed that they were under a religious obligation not to bear arms, nor acceptance of the premise that a merely philosophical opposition to war is sufficient to justify an exemption. The 1940 act simply shifted the emphasis from church teachings to the individual's own beliefs. Congress

[30] In our view Section 6(j) does not discriminate between religions as that term is used in the First Amendment. See pp. 93-97 below.

recognized that not every member of a sect accepts every tenet of the creed, that church members often arrive at different moral conclusions, and that many other individuals are religious without belonging to organized sects.

When the 1940 act (known as the Burke-Wadsworth bill) was first introduced, its provision relating to religious objectors duplicated the language of the World War I enactment. Hearings on S. 4164 before the Senate Committee on Military Affairs, 73d Cong., 3d Sess. 3. However, a number of witnesses—most of them representatives of church groups—appeared in favor of a broader exemption. See *Congress Looks at the Conscientious Objector* (National Service Board for Religious Objectors, 1943). Some of the witnesses were not themselves conscientious objectors, but sought to protect the interests of objectors of their own and other denominations. Their position was summed up by a non-church witness, Dr. Howard K. Beale of the American Civil Liberties Union, who testified that "[m]ost of the religious denominations have made provision for registration of conscientious objectors and have gone on record as determined to stand by the minority members of their faith whose reading of the teachings of Jesus have made them conscientious objectors to war." *Id.* at 86.

Dr. Beale inserted in the record before the Senate committee a group of resolutions and statements issued by most of the major denominations. The Reformed Church in America stated that it recognized the right of any minister or communicant "to follow the leading of his conscience before God" and the

Oxford Conference on the Church, Community, and State, maintained that the church should help its members "to discover God's will" and "should then honor their conscientious decisions," whether to participate in or abstain from war. *Congress Looks at the Conscientious Objector, supra*, pp. 87, 88. The Executive Board of the United Lutheran Church in America recognized "the individual right to conscientious objection to service in a war" because "[w]e believe that the conscience of the individual, informed and inspired by the Word of God, is the final authority in determining conduct" and, while "[s]uch recognition does not imply the Church's approval of such conscientious objection," it "does proclaim its devotion and respect for the Scriptural principle of the supreme moral responsibility of the individual conscience. Acts 5:29." *Id.* at 89. The Protestant Episcopal Church requested the same status as was accorded to Quakers for those of its members who were "unwilling for conscience's sake to take human life in war" and hence "conscientiously unable to serve in the combatant forces," since "it is the duty of Christians to put the cross above the flag in any conflict of loyalties unhesitatingly to follow the Christ." *Id.* at 87. The Presbyterian Church proclaimed "adherence to the principle that Christians owe allegiance to the kingdom of God that is superior to loyalty to their own country, and that in any matter in which the laws of their country conflict with the commands of God, they must assert their duty and right to 'obey God rather than men' " and on that basis supported

those of its members "who object to war on the grounds of their religion." *Ibid.* The Disciples of Christ stated that it recognized "the right of individuals to follow their own consciences in matters of practical conduct," and, taking note that "there are within the membership of the Churches of Christ individuals who, as conscientious followers of Jesus, cannot take part as combatants in any military warfare," it requested exemption for such individuals "on the basis of this conviction of Christian faith." *Id.* at 89, 87.

In addition, representatives of various churches testified before the Senate and House committees considering the bill. The position of the Disciples of Christ was explained more fully by the Reverend James A. Crain (*Congress Looks at the Conscientious Objector, supra,* p. 83):

> May I say, as secretary of a department of social education and social action, as to the exemption of conscientious objectors, as a noncredal body it is obviously impossible for the Disciples of Christ to make refusal to do military service an article of doctrine of the church. Such would be repugnant to their ideal of freedom of individual conviction and of individual responsibility to God. The same principle, however, commits them to unqualified support and approval of those within their fellowship whose concept of their duty to God forbids them to participate in war or to take human life.

C. S. Longacre, general secretary of the Religious Liberty Association of America, representing the Seventh Day Adventists, proposed that, in addition to an

exemption for members of the historic peace churches, an exemption also extend to "any person, though a member of an organization whose creed or principles do not forbid the bearing of arms but who individually has religious scruples against the bearing of arms." *Id.* at 71.[31] The Council for Social Action of the Congregational and Christian Churches asked that there be substituted for the bill's original language an exemption for "persons whose sincere conscientious, religious beliefs, principles and convictions forbid him" to participate in War. *Id.* at 79.[32]

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[31] The proposal of the Seventh Day Adventists suggested exemption only from combatant training, but not from military service as such. *Congress Looks at the Conscientious Objector*, *supra*, p. 71.

[32] The statements of other churches were more general in that they supported accommodation for individual conscience without offering supporting justification. Thus, the General Council of Congregational and Christian Churches and the Evangelical Synod of North America merely asked that the objections of members of their denominations who had scruples against war be given the same recognition as was given to the objections of members of the historic peace churches, and the American Unitarian Association resolved merely that conscientious objection "is entirely consistent with the historic principles of the Unitarian fellowship." *Congress Looks at the Conscientious Objector*, *supra*, pp. 86, 87. The Methodist Church of America asked exemption for its communicants who had scruples against war because "conscientious objectors * * * are a natural outgrowth of the principle of good will and the Christian desire for universal peace," and the Northern Baptist Convention stated that its denomination had "always stood for the supremacy of conscience." *Ibid.* In all probability these statements were based on the same reasoning as the more specific positions taken by the other denominations.

In short, the record before the Senate and House committees considering the draft legislation was replete with statements supporting the view that each individual determines the duties that God imposes upon humans in the conduct of their lives. Exemption was requested for those, regardless of the sect to which they belonged, who, in the exercise of that responsibility, determined that their religious view forbade all participation in war. Although the churches suggested that the restriction of the exemption to members of "peace churches" be abandoned, they still viewed the purpose as the accommodation of the needs of national defense with religious freedom, *i.e.*, an exemption for those who believed themselves under an obligation to God to abjure military service.

An exchange between Senator (later Justice) Minton and Frederick J. Libby (a Quaker representing the National Council for Prevention of War), illustrates this point. After Mr. Libby stated that Quakers did not believe that there was grounds to accord them special treatment not accorded to conscientious objectors who were members of other faiths, the Senator asked if he did "not think there is a difference between that group whose conscientious objections are based upon a religious belief that they learned at their parents' knees and just some idea that he has that he does not want to serve?" *Congress Looks at the Conscientious Objector, supra,* p. 29. The witness replied that he thought "that the opposition of most young people to war is really on the

basis of its futility as a method."[23] *Ibid.* When the Senator, admitting the futility of war, suggested that the country might not have any choice as to whether it would become involved, the witness shifted his argument and stated that many non-Quaker ministers had taken the Quaker position "and there are young people who have been taught that same point of view and hold it now as firmly as the Quakers." *Ibid.* The Senator then brought up again the distinction between those who had been taught pacifism from childhood and those who merely decided for themselves that they would not fight, and the witness replied that "there are thousands and tens of thousands of young people who are just as conscientious in their rejection of the war method as they understand the Christian religion as the Quakers are." *Ibid.* He then told a general who, when asked how he could reconcile war with his Christian principles, replied that he could not and would not "pretend to take Christ with me into that war." *Id.* at 30. Mr. Libby then commented (*ibid.*):

> Now that is a very significant statement, because it confronts a young man with a choice between two great loyalties—one his loyalty to God; the other, his loyalty to his country. I do not know any other loyalties that are so compelling as those; and if a young man has to choose between them because he becomes convinced that war is wrong, as General O'Ryan was convinced, then it is irreconcilable

[23] This is one of the major grounds offered by respondent for his pacifist beliefs (R. 66).

with the teachings of Christ; then he has to decide who is supreme in his life.

And finally, when Senator Minton stated that he thought "it is a poor thing for anybody to tell the Congress of the United States that they will counsel anybody to turn their back upon their country in the hour of its need and refuse to do what the duly elected representatives of this country in Congress determine is necessary to be done in defense of the country," the witness replied that "there is a higher loyalty than loyalty to this country, loyalty to God." *Id.* at 30, 31. Thus, although this witness attempted initially to justify an exemption for those who oppose war "on the basis of its futility as a method," he rested ultimately, as did the other proponents, upon the concept that "loyalty to God" is higher than "loyalty to country."

Further indication of the intention of Congress in amending the Burke-Wadworth Act is provided by an examination of the proposals which the committees rejected. Abraham Kaufman, executive secretary of the War Resisters' League, in opposing the entire bill, said that his group rejected "not defense, but military defense," and proposed reliance upon passive resistance, as in India. *Congress Looks at the Conscientious Objector, supra,* pp. 21–23. As an alternative to rejection of the bill, he asked "[r]ecognition of the nonreligious as well as the religious objectors," stating that the former are "citizens whose point of view is closely akin to the religious conscientious objector." *Id.* at 82. Reverend Paul Schilling, chair-

man of the Committee on World Peace of the Baltimore Conference of the Methodist Church, proposed either rejection of conscription entirely or "adequate provision for all genuinely conscientious objectors to military training and service, whether their objections spring from religious, ethical, or philosophical grounds." *Id.* at 82–83. To accomplish this purpose, Reverend Schilling suggested deleting the words "by reason of religious training and belief" and extending the exemption to "any person who is conscientiously opposed to participation in war in any form." *Id.* at 83. The same phraseology was also proposed by Dr. Beale, on behalf of the American Civil Liberties Union, who stated that his organization stood for the rights of Quakers, conscientious objectors from other denominations, and "conscientious objectors on nonreligious grounds who by established membership in organizations like the Fellowship of Reconciliation can establish the sincerity of their objections." *Id.* at 85.[34]

The committees thus heard the full range of arguments in favor of an exemption for ethical and philo-

[34] However, like Frederick J. Libby, Dr. Beale in support of his argument in favor of an expanded exemption, relied upon the impasse which only the religious objector encounters (*Congress Looks at the Conscientious Objector*, *supra*, p. 85): "[m]any of the conscientious objectors will stand out against the law, will persist in putting loyalty to God above loyalty to their country's laws" and "[i]t is a terrible thing for a man of devotion and high principles who loves both his God and his country, to be told that he must choose between them."

sophical reasons in addition to religious conscience; they were presented with language designed to reach this result. By choosing the phrase "religious training and belief" Congress made plain its intent to continue the historic practice of excusing from combatant training and service and assigning to other national service only those who believe they are required by their religion, meaning their relation to a Supreme Being, not to participate in war in any form.

The Second Circuit, in *United States* v. *Kauten*, 133 F. 2d 703, misconstrued the reason for the abandonment of the requirement of membership in an historic peace church and assumed, quite contrary to the legislative history, that Congress intended to "take into account the characteristics of a skeptical generation." *Id.* at 708. From that erroneous assumption, it proceeded to the conclusion that Congress made "the existence of a conscientious scruple against war in any form, rather than allegiance to a definite religious group or creed, the basis of exemption," overlooking the fact that the Congressional committees had specifically rejected language that would have extended the exemption in terms of conscientious scruple alone and had added the modifying phrase "by reason of religious training and belief." *Ibid.* The court said that Congress intended by "religion" to include "a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the

present time the equivalent of what has always been thought a religious impulse."[25] *Ibid.*

The Ninth Circuit differed. In *Berman* v. *United States,* 156 F. 2d 377, certiorari denied, 329 U.S. 795, it noted that if it decided "'that the exemption from military service written into the statute runs to all who sincerely entertain conscientious objection to participation in war * * * the phrase 'by reason of religious training and belief' would have no practical effect whatever." *Id.* at 382. Hence, it concluded that the phrase "was written into the statute for the specific purpose of distinguishing between a conscientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon an individual's belief in his responsibility to an authority higher and beyond any worldly one." *Id.* at 380. It reiterated this point by quoting (*id.* at 381) from the dissent of Chief Justice Hughes (with Justices Holmes, Brandeis, and Stone concurring) in *United States* v. *Macintosh,* 283 U.S. 605, 633:

> The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.

Both the *Berman* and *Kauten* decisions were before Congress when the present statute was adopted in 1948. Congress signified that *Berman* constituted the correct interpretation of its views by adopting the

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[25] The statutory interpretation in *Kauten* was dicta, but the Second Circuit applied the interpretation in *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521, and *United States ex rel. Reel* v. *Badt*, 141 F. 2d 845, to extend the exemption to objectors with views similar to those of respondent here.

definition of "religious training and belief" which the Ninth Circuit had borrowed from *Macintosh* and saying, as to the exemption provision (S. Rep. No. 1268, 80th Cong., 2d Sess. 14):

> This section *reenacts substantially the same provisions* as were found in subsection 5(g) of the 1940 act. Exemption extends to anyone who, because of religious training and belief in his relation to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service. (See United States v. Berman, 156 F. 2d 377, certiorari denied, 329 U.S. 795.) [Emphasis added.]

In sum, Section 6(j) is the product of a long period of evolution. Congress considered more than once, after full debate or testimony, what class should receive any special treatment accorded persons otherwise eligible for the draft who were opposed to participation in war in any form. The line of development has been remarkably consistent. The exemption, with few exceptions, has been confined to persons who belonged to religious sects opposed to war or to those whose individual religious beliefs gave them that conviction. From the day James Madison suggested that "no person religiously scrupulous shall be compelled to bear arms" (1 *Annals of Congress* 749) through the enactment of Section 6(j), there was general agreement that such an accommodation of religious freedom with national service neither created an unconstitutional discrimination nor violated the principle of separation be-

tween church and state. While long existence cannot validate an unconstitutional practice, the fact that Section 6(j) is consistent with American tradition goes far to demonstrate the reasonableness of the legislative classification and its consistency with the Constitution.

B. THE STATUTORY DEFINITION IS REASONABLY ADAPTED TO PROMOTING THE FREE EXERCISE OF RELIGION

In our view, the line drawn by Section 6(j) is substantially that between "religious" objectors, using the term "religious" as in the First Amendment, and all other pacifists. In his dissenting opinion in *United States* v. *Macintosh*, 283 U.S. 605, 633–634, Chief Justice Hughes stated:

> The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.

The Court later approved that definition,[36] and Congress substantially adopted it in Section 6(j).

In our brief in *United States* v. *Jackson*, No. 51, this Term, pp. 18–23, we discuss at greater length the meaning of Section 6(j). It is sufficient here to say that Congress intended to cover all conscientious objectors whose opposition to war came from obligations superior to those resulting from man's relationship to his fellow man. The statute itself states that "[r]eligious training and belief * * * means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially politi-

[36] Chief Justice Hughes' views in effect became the law in *Girouard* v. *United States*, 328 U.S. 61, which overruled *Macintosh*.

cal, sociological, or philosophical views or a merely personal moral code." The expansion of the definition in Chief Justice Hughes' opinion from belief in "God" to belief in "a Supreme Being" strongly suggests that Congress was not requiring belief in any traditional concept of God, but was allowing for any form of belief based upon a superior obligation, as distinguished from a sociological, philosophical, or ethical one. Moreover, the history underlying Section 6(j) strongly supports this broad reading of the statute. At the least, this is a reasonable construction which may be adopted to avoid constitutional doubts arising from granting exemptions to persons holding one religion and not those holding another.

Relying on *United States* v. *Kauten,* 133 F. 2d 703 (C.A. 2), and *Torcaso* v. *Watkins,* 367 U.S. 488, the court below and respondent say that the statute does not allow an exemption for all who believe in religion. In *Kauten,* the Second Circuit held that the phrase "religious training and belief"—which was left undefined in the 1940 predecessor statute—included "conscience," regardless of how this conscience was formed. The court did not say, however, that religion actually included all conscientiously held philosophical views; rather, it stated that conscience "is for many persons at the present time the equivalent of what has always been thought a religious impulse." And it indicated that religion, at least in this area, lay beyond convictions based solely upon reason.[37]

[37] The full definition in *Kauten* was (133 F. 2d at 708):

"Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe—a sense common to men in most primitive and in most highly civilized societies. It accepts the

In *Torcaso,* this Court did not define religion. Instead, it held that the First Amendment prohibits placing the authority of the State on the side of those who believe in religion and against those who do not believe in religion. As the Court stated the law (*id.* at 495):

> We repeat and again affirm that neither a state nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." Neither can constitutionally pass laws or impose requirements which aid all religions against non-believers, and neither can aid these religions based on a belief in the existence of God against those religions founded on different beliefs.

At this point, the Court states in a footnote (367 U.S. at 495, note 11): "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism,

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aid of logic but refuses to be limited by it. It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets. * * * Recognition of this obligation moved the Greek poet Menander to write almost twenty-four hundred years ago: 'Conscience is a God to all mortals.'; impelled Socrates to obey the voice of his 'Daimon' and led Wordsworth to characterize 'Duty' as the 'Stern Daughter of the Voice of God.'

"There is a distinction between a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous and a conscientious objection to participation in any war under any circumstances. The latter, and not the former, may be the basis of exemption under the Act. The former is usually a political objection, while the latter, we think, may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse."

Taoism, Ethical Culture, Secular Humanism and others." We submit that the Court was assuming that these groups hold a belief in something beyond mere moral commitment to one's fellow man. Otherwise, all thoughtful people would be believers in religion and the Court's allusion to non-believers would include only those unwilling to take any position at all.

In our view *Torcaso* is inconsistent with *Kauten* and makes clear that religion is more than mere conscience. In *Torcaso,* the Court speaks of non-believers and of believers in religion who do not believe in the existence of God. Surely, "non-believers" does not mean people without conscience. Instead, non-believers, in the opinion as in common usage, means those people who recognize no authority above the obligation of man to his fellow man. In contrast, the Court clearly labelled as religious those who do not believe in God within the normal meaning of that word but who do believe that man has definite obligations to a force superior to himself.[38]

For the foregoing reasons, we think that the classification established by Section 6(j) includes all "religious" objectors who are seeking to follow the commands of "religion" as that term is used in the First Amendment. But whether the lines drawn by the statute coincide exactly with the meaning of "religion" in the First Amendment is immaterial. Here, Congress has made a sincere and careful effort to

[38] See the discussion of the views of the eminent Protestant theologian, Paul Tillich, in *Jakobson* v. *United States*, 325 F. 2d 409, 415–416 (C.A. 2), pending on writ of certiorari, No. 51, this Term.

exempt any person who is obeying his religious tenets from the necessity of choosing between defiance of the State and disobedience to the will of his particular God, however he may conceive Him. It is plain, too, that the statutory definition covers the core of "religious" objectors in the constitutional sense of religion even if there is argument about the periphery. There is room for the reasonable exercise of Congressional judgment in achieving the accommodation between freedom to obey religious obligations and the needs of national defense.

Whatever the disposition of cases in the penumbra there is a clear difference in principle between those who believe that in refusing to participate in military training or service they are following a divine command and those who conclude, on the basis of their own reasoning, that war is an improper instrument in human relations. As a matter of logic and definition, conscience and religion cannot be equated for purposes of the First Amendment. Conscience means a sense of good and evil; religion means a system of faith and worship regarding "God or a god." Webster's New Collegiate Dictionary (2d ed., 1959). On the other hand, if religion includes conscience, the First Amendment would be expanded beyond anything either the framers or this Court ever suggested. It would mean that a wide variety of governmental regulations would raise First Amendment issues whenever they happened to conflict with action taken by persons which was based on philosophical and moral views. For example, a man may have a strong philosophical belief that labor unions are evil. Surely, a free-

exercise-of-religion question is not raised if he refuses to bargain with a union in his plant.[39]

The conflict of conscience and conscription in an objector whose religion forbids his participation in war is significantly different from that of the non-religious objector. The former believes that he has no choice; he will admit that whether or not he would independently have reasoned to the conclusion that all war is wrong is immaterial since he has an unalterable obligation superior to himself. Thus, most Orthodox Jews would not have themselves decided that pork should not be eaten, yet they believe that to do so would break God's law. When the government tells such a religious man to do something which he believes God has forbidden him to do, he is faced with a conflict of authority. And he firmly believes that God, not man, is the higher authority.

On the other hand, non-religious objectors, like respondent, reach their moral positions entirely on the basis of their own reasoning. They generally look to history and their own experience to determine what is best for mankind (see R. 66, 73–76). They have no obligation to an authority outside themselves. Thus, when Congress requires that they serve in the armed forces, their dilemma is that they are forced to do

[39] There is no doubt, and respondent does not argue to the contrary, that respondent's views do not come within the exemption as construed in the discussion above. He does not know whether God exists, believes in purely ethical principles, and opposes war entirely because of its effect on humanity (see the Statement, pp. 3–7 above). On the other hand, the government has stipulated that respondent does oppose war on the ground of conscience and therefore satisfies the definition of religion in *Kauten* (R. 49).

something which they seriously believe is wrong for mankind.

We do not minimize the seriousness of the dilemma in which the non-religious objector is placed. Quite possibly Congress might choose, as the British Parliament apparently has chosen, to exempt other conscientious pacifists in the interests of individual liberty, but the weight to be given to political, philosophical, or personal moral views in framing a universal military and training law is a legislative question. The dilemma of the non-religious objector is significantly different from the conflict of conscience of the man compelled to refuse to participate in war by his belief in a relation to a Supreme Being. Testimony before Congress repeatedly emphasized the extreme unfairness of placing religious men in that position (see pp. 65–67, 68, note 34 above). Congress had power not only to recognize the distinction but, in the penumbral area, to decide exactly where the line should be drawn in accommodating respect for religious obligations with the needs of national defense.

C. EXPERIENCE WITH THE EXEMPTION ATTESTS TO ITS REASONABLENESS

As shown in our discussion of the history of conscientious objection in this country, the line adopted by legislators has been remarkably consistent. That very consistency tends to show that the present legislative solution is essentially fair and workable. We know of nothing in recent experience to suggest the contrary.

The operation of the selective service system since Section 6(j) was enacted would also seem to indicate

that the compromise adopted by Congress has proved generally satisfactory. Peacetime conscription—a rare event in American history—has gone forward with what can certainly be described as a minimum of unrest and distress. Unquestionably, there has been widespread public acceptance. The exemption for conscientious objectors has neither resulted in an unduly large loss of manpower nor in an unduly large number of rejected claims for exemption. In the decade following the enactment of Section 6(j), a total of approximately 10,000 cases was referred to the Conscientious Objector Section of the Department of Justice. Smith and Bell, *supra*, p. 702. Of this total, approval of the claim was recommended in about 80 percent of the cases.[40] A large portion of the claims rejected reflect a determination that the applicant was not sincere. The hundreds of thousands of men called who did not claim to be objectors have apparently accepted as reasonable and just the exemption from combatant service of those opposed to war in any form because of their religious belief in their relation to a Supreme Being.

We do not contend that the successful operation of the present classification establishes that the line drawn by Congress is the ideal one. That can neither be proved nor disproved. It does appear, however, that, both from the official and the public standpoint, the law has operated successfully and with remarkably little friction. This in turn constitutes persua-

[40] Although the Department's recommendation to the Appeal Board is not binding upon the board, experience has shown that these recommendations are followed with very infrequent exception.

sive evidence that Congress has made an allowable judgment.

The fact of widespread public acceptance is one of particular significance in this area. Those who serve in the armed forces do so at no small sacrifice. Some may need no urging to serve their country in its hours of crisis. For many, however, the duty to serve in that demanding and dangerous capacity is rendered considerably more tolerable by the knowledge that it is a well nigh universal obligation in which they are called upon to share. Thus, an exemption which would broadly excuse from combatant service all of those who sincerely dislike or oppose the idea of war would not only threaten to deplete the available source of manpower; it would also tend to cause disaffection, perhaps on a very serious scale, among those who remain to shoulder the burden. Congress is thus called upon to strike a delicate balance—to accord a measure of relief to those whose situation appeals most compellingly to the instincts of toleration and compassion, yet to stop short of exemptions so broad or so numerous as to undermine confidence in the concept of universal service.

D. THE DISTINCTION DRAWN BY SECTION 6(j) BETWEEN A RELIGIOUS OBLIGATION TO A SUPREME BEING AND A POLITICAL OR PHILOSOPHICAL CONVICTION OR A PERSONAL MORAL CODE CONFORMS TO THE RELIGIOUS TRADITIONS OF THE AMERICAN PEOPLE

The widespread public acceptance of the exemption for conscientious objectors as classified in the present selective service system is no doubt due largely to the fact that the definition of "religious training and belief" in Section 6(j) is in keeping with the ideals and traditions of the American people. Their religious

character has been repeatedly noted in the opinions of this Court. In *Abington School District* v. *Schempp,* 374 U.S. 203, 213, the Court reiterated the specific recognition it had given to this fact in *Zorach* v. *Clauson,* 343 U.S. 306, 313:

> We are a religious people whose institutions presuppose a Supreme Being.

Chief Justice Hughes, dissenting in *United States* v. *Macintosh,* 283 U.S. 605, 633–634, stated the understanding of religion shared by the great majority of the American people:

> The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation. As was stated by Mr. Justice Field, in *Davis* v. *Beason,* 133 U.S. 333, 342: "The term 'religion' has reference to one's views on his relations to his Creator, and to the obligations they impose of reference for his being and character, and of obedience to his will." One cannot speak of religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God.

No court today is likely to repeat in a literal way the assertion that, "We are a Christian people," but there is scant dissent from the proposition that we are a people "according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God." *United States* v. *Macintosh, supra,* 283 U.S. at 625.

This widely-held consensus of opinion would not support aid to religion or discrimination against non-

believers. Compare *Engel* v. *Vitale,* 370 U.S. 421; *Abington School District* v. *Schempp,* 374 U.S. 203. But the consensus is relevant in defining the class of those exempted from combatant duty and assigned to other national service, provided that the government may seek to accommodate the needs of national defense with the free exercise of religion, as we have contended. For, as Mr. Justice Brennan pointed out in *Abington School District* v. *Schempp,* 374 U.S. 203, 295, nothing in the Constitution compels the government to blind itself to religious beliefs in the application of legislation for purely secular ends where the effort is to alleviate burdens upon the free exercise of each citizen's religion.

In determining whom to assign to noncombatant national service because of conscientious opposition to participation in war in any form, Congress had strong reason to take into account the deep-seated convictions of the American people. The scope of the exemption from military service accorded to "conscientious objectors" is a matter of concern not only to those who qualify and those who might desire an exempt status that Congress denied them; it also affects all other men—and also their families—when called for military training or service. It is one thing for a man to be called upon for the same service to which all whom he feels are similarly situated are also subject; it is another to be called to serve—or to have one's son or husband summoned—when others have been excused who were widely regarded as fairly subject to the same obligation.

The line drawn by Congress has its roots in the beliefs of the men and women affected by the draft. Whatever nice distinctions must be drawn in its application, the great bulk of the people affected would find the governing principle in section 6(j) both understandable and fair—more understandable and fairer, we suspect, than any other that might be developed. Since their response bears upon the workability of the law and thus upon its secular objectives, the conformance of the distinction to our religious tradition goes far to demonstrate the reasonableness of the classification.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be reversed.

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Summary of argument	17
Argument	18
I. Section 6(j) grants an exemption to any conscientious objector whose views are based on an obligation superior to that arising from any human relationship	18
A. The background of Section 6(j)	18
B. The immediate history of Section 6(j)	21
II. The Selective Service authorities were warranted in finding that respondent's opposition to war is not based on an obligation superior to that arising from any human relationship	24
Conclusion	30

CITATIONS

Cases:	
Berman v. *United States*, 156 F. 2d 377, certiorari denied, 329 U.S. 795	22, 23
Cox v. *United States*, 332 U.S. 442	25
Dickinson v. *United States*, 346 U.S. 389	25
Eagles v. *Samuels*, 329 U.S. 304	25
Estep v. *United States*, 327 U.S. 114	24, 25
Girouard v. *United States*, 328 U.S. 61	22
Gonzales v. *United States*, 364 U.S. 59	25
Sicurella v. *United States*, 348 U.S. 385	16
United States v. *Kauten*, 133 F. 2d 703	21
United States v. *Macintosh*, 283 U.S. 605	22, 23
United States v. *Seeger*, No. 50, this Term	17, 18, 20, 21, 29

744-915—64——1

	Page
Constitution and Statutes:	
U.S. Constitution, First Amendment	29
Selective Training and Service Act of 1940, 54 Stat. 885, 889	20, 21
Universal Military Training and Service Act, 50 U.S.C. App. 451, *et seq.*:	
Section 6(j)	2, 16, 17, 18, 21, 22, 24, 29
Section 10(b)(2)	24
13 Stat. 9	20
40 Stat. 78	20
Miscellaneous:	
I Annals of Congress 749	19
28 Annals of Congress 774	19
63 Cong. Globe 264	20
55 Cong. Rec. 1473–1479	20
Public Laws of the Confederate States of America, 1st Cong., 2d Sess., ch. 45	19
I *Selective Service System Monograph No. 11, Conscientious Objection*	19
S. Rep. No. 1268, 80th Cong., 2d Sess	22

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 51

UNITED STATES OF AMERICA, PETITIONER

v.

ARNO SASCHA JAKOBSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 27–39) is reported at 325 F. 2d 409. The opinion of the district court (R. 22–23) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 22, 1963 (R. 40). A timely petition for rehearing was denied on February 10, 1964 (R. 41). On March 6, 1964, Mr. Justice Brennan extended the time for filing a petition for certiorari to and including March 24, 1964. The petition was filed on March 20 and granted on May 4, 1964 (R. 142–143). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether respondent was exempt from the draft as a conscientious objector on the ground that his opposition to war in any form resulted from his "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" within the meaning of Section 6(j) of the Universal Military Training and Service Act.

2. Whether Section 6(j) is constitutional if it does not permit respondent to qualify as a conscientious objector.[1]

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides in pertinent part:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

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[1] This second issue is discussed in the government's brief in the companion case of *United States* v. *Seeger*, No. 50, this Term.

STATEMENT

After a trial by the United States District Court for the Southern District of New York (a jury having been waived), respondent was convicted of having refused to submit to induction into the armed forces and was sentenced to imprisonment for a year and a day (R. 26). On appeal, the conviction was reversed on the ground that the denial of his claim to exemption as a conscientious objector may have rested on the erroneous ground that he did not believe in a Supreme Being as required by the statute (R. 27–39).

Respondent registered with his local board on September 2, 1953, shortly after reaching his eighteenth birthday. In filling out his classification questionnaire, he made no claim for exemption as a conscientious objector. He did, however, forward to the board, on September 11, a doctor's certificate indicating that he possessed a disabling back ailment. On September 17, he was classified 1–A. He sought and was given student classification until June 1955 and again until June 1956. After he wrote to the board in January 1956 that he had a leave of absence from college and was working full time, he was reclassified 1–A. He was ordered to report for a physical examination on February 27. He brought with him and submitted a doctor's certificate indicating that he still suffered a back disability. However, he was found acceptable for service. On April 18, 1958, the date upon which he was notified of his acceptance, he wrote to the board making, for the first time, a claim as

a conscientious objector and requesting the necessary form (Gov. Ex. 2–21; see R. 121–122).[2]

In filling out the special form for conscientious objectors, respondent submitted a fifteen-page addendum to explain his beliefs (R. 44–55). He stated that he believed in a "Supreme Being" who was "higher than Man," who was the "Creator of Man" in the sense of being "ultimately responsible for the existence of" man, and who was "the Supreme Realty" of which "the existence of Man is the *result*" (emphasis in the original) (R. 44). He said that "as a human being with human limitations I am incapable of knowing anything more about the nature of the Supreme Reality other than the fact that such Reality does exist" (R. 44). He further stated that "religious experience" involved "meditation and contemplation" by which he sought knowledge concerning the ultimate nature of man (R. 44). Respondent brought to this process "reason aided by faith," using the latter word to mean "faith in my

[2] Respondent later explained to the hearing officer that he had delayed making his claim because he had not thought through his views on conscientious objection until he had passed his physical examination, and until then had "frankly hoped I would be 4–F" (R. 122). At his trial, he claimed that six months prior to his physical examination he had requested from the clerk of the board an explanation of the religious qualification for a conscientious objector status, and was told that it was necessary to submit proof of long-standing membership in an accepted pacifist religion, and that it was not until after his physical examination that he was informed, at the offices of the American Friends Service Committee, that there was no such restriction (R. 12–14).

own powers for seeking and recognizing the truth" (R. 44). From his contemplation of the nature of man, he concluded that "men can, with concentrated effort, achieve volition that is not completely determined by heredity and environment" (R. 45). This led him to "two inescapable corrolaries": (1) that man must be "partly spiritual" and therefore "partly akin to the Supreme Reality," and (2) that man must "develop his own values with the use of his d[i]vine gift of reason" (R. 45). Since life, he said, is the most certain thing that exists, being the only thing that is given to man rather than created and arranged by man, it is "sacred" and "a higher value than all the other values" (R. 46). Hence, his "most important religious law" was that "no man ought ever to willfully sacrifice another man's life as a means to any other end" (R. 46).

Respondent offered five specific reasons for his opposition to war:

1. War entails "the unlimited use of violent force" and "the sacrifice and destruction of countless innocent individuals," and hence "it is the method 'war' itself which must be fought if we are to have a lasting peace" (R. 46);

2. In war "the enemy is reduced to a mere abstraction," and "it is incompatible with my most sacred convictions to reduce the killing of concrete human being to a statistical necessity, as I consider all human beings to be special and worthy of serious and special consideration" (R. 46–47);

3. On the one hand, the cause of wars is the "degeneration of an inherently inadequate system of culturally-patterned values," and on the other, war "gives impetus to the very moral atmosphere in which further conflicts can so easily breed" (R. 47);

4. The "ends we all desire do not justify the methods of war" and "the methods of war are not a practical means to those ends" (R. 47);

5. The "better way to bring about a peaceful world is for individuals, whose consciences direct them to do so, to stand against the very core of the problem, by not adopting the techniques of war themselves, and by working in a positive way for peaceful aims instead" (R. 47–48).

In answer to a question as to the source of his training and belief, respondent stated that his beliefs "developed entirely by means of my own active efforts," involving a "conscious allocation of time for active concentration" (R. 48). Going to a city-wide high school made him "feel related to people of all races and religions" (R. 49). Working as a counselor in welfare children's camps showed him "how the effects of love and understanding combined with a positive emphasis were much more satisfactory in the long run than the effects of a 'disciplinarian' approach combined with a negative emphasis on punishment," and it was there that he "first started to cope more or less seriously with the problems" which led to his request for exemption (R. 49). In addition, he received help from certain books that he

read.[3] Respondent concluded this portion of the form by saying (R. 50):

> But above all, I must emphasize that my present beliefs and convictions were developed mainly by means of an active, concentrated effort to think about the problems involved, an effort which included the spending of much time sitting alone and thinking about the problems involved, often with the aid of making notes, scribbles, outlines, etc. It is in this manner that my religious and social thinking has developed in the last few years.

In answer to a question as to the circumstances, if any, in which he believed in the use of force, respondent answered that non-violent force (such as boycott, physical restraint of a child, etc.) might be justifiable. As to the use of violent force, as, for example, to kill a criminal to prevent him from killing, he stated that the criteria that he would want to use were (1) the likelihood of hurting innocent bystanders; (2) whether his actions would be "vengeful and done in anger" or "done sadly and only in order to help"; (3) whether violence could be avoided; and (4) whether the use of violence would lead to more violence and more bloodshed (R. 51). He continued by declaring that the "real question" was where to "draw the line," and that resort to war was

[3] Respondent listed the following: Remarque, *All Quiet on the Western Front;* Sorokin, *The Crisis of Our Age* and *S.O.S.—The Meaning of our Crises;* Koestler, *Reflections on Hanging;* Fromm, *Escape from Freedom, Man for Himself, Religion and Psychoanalysis, The Sane Society,* and *The Art of Loving;* Dostoevski, *Crime and Punishment* and *Notes from the Underground* (R. 50).

one use of force that he would never advocate under any circumstances (R. 51). He expressed the view that even aggression resembling that of the Nazis and Japanese would not justify resort to war. He suggested that if the United States had been pacifist, this would have affected the values of the rest of the world and World War II might not have occurred (R. 50–53).

Up to this point, respondent claimed merely 1–A–O status as a noncombatant (R. 42). In the addendum to the special form for conscientious objectors which he submitted, he stated that he "put [his] major emphasis on positive achievements," and for that reason could "accept a 1–A–O with a clear conscience" (R. 54). However, when he appeared for a hearing before the Local Board on December 9, 1958, he handed in a letter requesting that his claim be changed from a request for 1–A–O to a request for an exemption (1–0), since on further reflection he felt that participation in any form of military service would involve him "in too many situations and relationships that would be a strain on my conscience that I feel I must avoid" (R. 70). He stated that he could not with a clear conscience limit his service in the medical corps to one side of a war; that he would not "give up the moral responsibility for my actions to professional soldiers"; and that his participation would condone an institution "based on fundamental values, convictions, and action-patterns that are so diametrically opposed to my own" (R. 70–71).

Respondent also submitted at that time 43 pages of "notes on religion" to explain further his beliefs (R. 72–115). He started by defining religion as the "*sum and essence of one's basic attitudes to the fundamental problems of human existence*" or, in other words, "the *subjective* attitudes of people to the Givens of Exist[e]nce" (emphasis in the original) (R. 72, 73). He said he believed in "Godness," which he defined as "the Ultimate Cause for the fact of the Being of the Universe," and stated that to deny its existence would be to deny the existence of the Universe, since "anything that Is, has an Ultimate Cause for its Being" (R. 73). He added that questions concerning the nature of Godness are "Speculation," and that in the "non-dogmatic conception of religion" an individual "forms (or accepts) his fundamental attitudes to Life" on the basis of what he knows about "this World"; this represents "the limits of what he, as a human being, can know" (R. 73). He stated that an individual's relationship to Godness exists primarily on the level of "feelings" rather than only on the intellectual level; and that the Self is "felt as something that bears certain, fundamental, *definitive* relationships to things outside of itself" (emphasis in the original), which gives to the individual "a position in the Order of things" (R. 74).

Respondent said that man can feel a relationship to Godness in two directions: "vertically, towards Godness directly" and "horizontally, towards Godness through Mankind and the World" (R. 74). The two feelings "tend to be mutually exclusive," since

"the more one senses a direct, one-to-one relationship to Godness, the less one will sense a concrete relationship to Mankind and to the World, and vic[e] versa" (R. 75). He stated that he rejected the idea of the vertical relationship in favor of the horizontal one, since the vertical feelings imply "a kind of knowledge about the nature of Godness that is unknowable under the human Limits," and because, "for the sake of Spiritual Growth,[4] they induce one to assume an attitude towards mundane events that make such Growth impossible" (R. 75–83). It was his belief that "the more closely one relates to the Universals and Essentials in Life, the nearer one comes, psychically, to that essential Order in the Universe that is so closely connected with the concept of Godness" (R. 83). He further stated that this was also the basis for his "religious conscience," since to him a "man is obeying a 'higher law' than a social or legal one when he is basing his actions on attitudes that stem most directly from the way he feels about the basic Givens in Life" (R. 83).

With the foregoing as basic postulates, respondent sought to show how these beliefs led him to conscientious objection. To him "the basic problem of religion" was "the choice with which every individual is confronted of either Accepting or Rejecting the Order of the Universe as it presents itself to him"

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[4] Respondent defined "Spiritual Growth" as "a dynamics that reaches towards Wisdom," defining "Wisdom" as "a dynamics that reaches toward Truth: Truth with the capital T emphasized to connote the sense of Truth of the unity of things" (R. 80).

(R. 86). His choice was the "psychic Acceptance of Life" (R. 90–107), which necessarily was inseparable "from the attitudes that are commonly called by the terms 'Brotherliness' and 'Altruism'" (R. 95). All life involved both the "basic Oneness and Similarity of Essence" and the "Inter-extensiveness of Change" (R. 97, 98). Hence the goals that an individual chooses are "relative" only in the sense that each person must choose them out of his own personal beliefs; they are "absolute" in the sense that they are binding on conscience and in the sense "that any choice an individual makes for himself is also implicitly made for the whole world" (R. 106). A "Reverence for Life" was "one of thee most fundamental components" of his conscience and every person's life was worthy of special consideration (R. 109). He said (R. 108–109):

> Wilful killing presupposes the Rejection of Life—the Rejection of Someone's Life for purposes that are supposedly greater than that Life itself. And there are no such purposes. Every killing is a Fratricide, and every Fratricide is a psychical suicide. If there are purposes that are greater than ones Brother's Life, then there are purposes that are greater than ones own life. And how can one psychically Affirm the basic Blessedness of the Gift of Life and still feel that there are human purposes that are greater?

While respondent said that he opposed "Evil," he felt that "the history of bloodshed—especially that of the recent past—has clearly demonstrated that violence is a poor answer to Evil" (R. 110). The only

answer to the problem is by "making examples of ourselves by our own refusal to commit or condone the prevalent socially-patterned Evils" and by "the development of our own knowledge of Non-violent Resistance as an active force" (R. 111). Respondent concluded with a reiteration of his arguments why war cannot be condoned (R. 109–115). In a final addendum, he stated that he had tried to show that his objection was rooted in "religion," but that in any event, it "springs from the same Source as religion, answers the same fundamental questions as religion, and produces attitudes that seem to be as binding on the conscience as religion" (R. 115).

The Local Board found that respondent's views were essentially sociological or philosophical or "at most a merely personal moral case," were "not based upon religious training & belief," and did "not reflect duties as dictated by a supreme being superior to those arising from any human relation" (R. 116). It concluded that respondent was available for non-combatant military service and classified him 1–A–O (R. 117).

On appeal, the matter was referred to the Department of Justice. In a statement submitted to the hearing officer (R. 127–129), respondent defined "religion" as consisting "of a deeply-felt and consistent set of values, based on fundamental attitudes to exist[e]nce, which are rooted so firmly in an individual's consciousness as to constitute in him a moral imperative of the kind known as 'conscience'" (R. 127). He said that "Godness stands for ultimate meaning,

ultimate explanation, and ultimate source of value" (R. 127). He rejected both atheism and theism but found the latter "a thousand times nearer the truth" (R. 128).

The hearing officer found respondent to be vague as to the origin of his belief with respect to conscientious objection and took note of his delay, first in filing his claim and then in changing it from a claim for 1–A–O classification to a claim for 1–O classification. He reported that respondent's answers to his questions threw no further light upon his religious training and beliefs. The hearing officer concluded that respondent's opposition to military service was not by reason of his religious training and belief but was based upon a personal moral code and that he is not sincere in his claim. He therefore recommended that the appeal not be sustained (R. 122). The Department of Justice so found and recommended to the Appeal Board (R. 120–123).

Respondent submitted an answer to the findings of the Department of Justice in which he attempted to show that his views were based upon religious training and belief, and that they were sincere (R. 130–135). He stated first that his position was a religious one because of "its all-embracing and transcendant character in my being" (R. 130). He continued (R. 130–131):

> I do not hold these convictions because I have intellectually concluded that they are objectively a good position to take; I hold them because I find that I *must* live in harmony with my inner light. They do not represent a super-

> ficial outlook that I have cerebrally chosen; they represent a position that is grounded in the deepest layers of my consciousness. The commitments of this position are transcendant in that they represent to me an absolute moral imperative, and constitute what I feel to be my deepest obligations in life. I feel that I, like everyone else, have many obligations in many different directions: obligations to friends, to law, to society, to humanity. But I also feel that when these obligations from without conflict in their demands with my inner commitments, I have no choice but to choose in accordance with my deeper obligations and to take whatever consequences ensue. [Emphasis in the original.]

He also stated that his "Religious Training" was to have "read widely from Plato to Gandhi, meditated consciously on many problems, and lived and experienced life for twenty-four years" (R. 132). On the question of his sincerity, he stated that "I admittedly made little attempt to consistently face the problem of compuls[o]ry military conscription until the Fact was practically staring me in the face * * *. [I]nstead of facing up to my responsibility to form a well thought out position with respect to the fact that military service would be a fundamental rejection of my values, I childishly hoped and led myself to believe that my back condition would suffice to make a difficult task unnecessary" (R. 132–133). He also explained that, having been misinformed by the clerk as to the legal validity of his claim, it was not until after his physical examination that he felt satisfied

that his religious position, although unorthodox, would qualify him under the law to an objector's classification; "[u]p to that point I thought that the government offered me no alternative to prison" (R. 133). As to his initial request for a 1–A–O classification, he stated that his position, "though essentially religious and capable of standing on that basis alone, was one which had so many consequences on other levels of inquiry, that an individual taking it had a moral responsibility to hold a full and well-thought-out position on these levels," and that he then felt that he "could fulfill only part of that requirement" (R. 133–134). Therefore, this "confusion, plus a little fear, made me feel at that point that I might be able to live with myself with a 1–A–O classification" (R. 134).

The Appeal Board classified respondent 1–A (R. 136). Respondent thereupon took an appeal to the Director of Selective Service stating that his reclassification as 1–A was an unhappy and unjust result. He inquired whether it would not "be possible for Selective Service to consider me to be useless as a prospective military entity" and whether there was "no way that I could serve my society and mankind in a non-military manner that would represent a better alternative than a prison sentence" (R. 136–137). The Director declined to take further action. Respondent reported for induction but refused to be inducted (R. 139–140).

The district court found respondent guilty of having refused to submit for induction. It first recog-

nized that it was "not altogether clear whether the hearing officer's finding that respondent was insincere has been adopted by the Board but observed that it was necessary in order to convict under this Court's decision in *Sicurella* v. *United States,* 348 U.S. 385, 392, to sustain all the grounds given for the classification (R. 23, note 2). The court then held that, on the record as a whole, it could not say "that there was no basis in fact for the Appeal Board's finding of insincerity" (R. 24). The district court also applied the statutory definition of "religious training and belief" set out in Section 6(j) and concluded that "the Board was fully warranted in determining that defendant's views were not based on religious training and belief and in denying a 1–O classification on that ground" (R. 25).

The courts of appeals, in reversing the conviction, noted that, if Section 6(j) were construed to deny exemption as conscientious objectors to persons holding views of the sort held by respondent, its constitutionality would be doubtful (R. 32–38). It also observed that it was unlikely that Congress intended to make theological distinctions between different concepts of a Supreme Being (R. 38). The court concluded that respondent believed in a Supreme Being and, therefore, that his opposition to war was founded on "religious training and belief" as defined by Section 6(j). With respect to the alternate ground—lack of sincerity—the court of appeals helds that there was "basis in fact" to support such a finding (R. 30–31). Since, however, the Appeal Board had

not indicated whether its classification rested on the valid or invalid findings, or both, the court of appeals held that the Board's classification could not stand (R. 39).

SUMMARY OF ARGUMENT

Section 6(j) grants an exemption to all conscientious objectors whose objections to military service have a religious basis. It carefully excludes those whose objections lack such basis. The history of this provision and of predecessor statutes shows no less convincingly that the requirement of religious training and belief was written into the law for the specific purpose of distinguishing between views derived from one's sense of obligation to one's fellow man and views based upon belief in relation to a Supreme Being (however conceived or defined) imposing duties superior to all human relationships.

In the companion case of *United States* v. *Seeger*, No. 50, we have dealt with the constitutional question whether Congress may grant an exemption to persons whose objections to military service are based upon a conflicting religious obligation without extending a similar grant to those who object on political, sociological, or philosophical grounds. We there argue that this is a reasonable and permissible accommodation between the needs of national defense and the freedom of religion guaranteed by the First Amendment. Assuming that in *Seeger* the Court rejects the constitutional challenge to the statute, the issue in the instant case narrows to the question whether the selective service authorities had some basis in fact

for concluding that respondent's objections were grounded essentially upon a personal moral code rather than upon a religious obligation. Respondent's explanation of his views is not free from conflict and ambiguity, and the determination whether they meet the statutory test presents a close and difficult question. Taking into account the prerogatives of the Selective Service authorities in assaying the facts and the very limited scope of judicial review in this area, we believe that the administrative determination should not have been disturbed.

ARGUMENT

I

SECTION 6(j) GRANTS AN EXEMPTION TO ANY CONSCIENTIOUS OBJECTOR WHOSE VIEWS ARE BASED ON AN OBLIGATION SUPERIOR TO THAT ARISING FROM ANY HUMAN RELATIONSHIP

A. THE BACKGROUND OF SECTION 6(j)

In the long history of exemptions from military service for conscientious objectors in the United States, we know of no indication of any attempt by Congress to distinguish between or among religious beliefs.[5] This history forms the background of Section 6(j) and helps to explain its meaning. It is most unlikely that Congress would have radically changed the basis of the exemption without any indication that it intended to do so.

Thus, the resolution of the Continental Congress stating that it did not intend to interfere with the

[5] See the history set forth at length in the government's brief in *United States* v. *Seeger*, No. 50, this Term, pp. 41–72.

conscience of those who objected to war referred to all those "who from Religious Principles cannot bear Arms in any case." I *Selective Service System Monograph No. 11, Conscientious Objection* (1950) 33–34. In 1776, the Maryland Convention, in remitting fines assessed for failure to enroll in the militia, recommended a distinction between those who refused "from religious principles" and from other reasons. *Id.* at 37. The proposed constitutional amendment of James Madison would have exempted any "person religiously scrupulous" from bearing arms. I Annals of Congress 749.

The House of Representatives passed a bill during the War of 1812 to exempt Christian sects conscientiously opposed to bearing arms from the call of the militia. 28 Annals of Congress 774–775. However, at that time there were probably no non-Christian religious sects in the United States which had such conscientious scruples. Thus, the sponsor of the amendment cited only Christian religions as taking this position. *Id.* at 772–774.

During the Civil War, North Carolina gave an exemption from the militia for all religious conscientious objectors and Virginia gave an exemption to any person belonging to a church with those tenets. *Monograph No. 11*, pp. 43–44. The Confederacy exempted from conscription Quakers, Dunkards, Nazarenes, and Mennonites because these were the pacifist churches at that time. Public Laws of the Confederate States of America, 1st Cong., 2d Sess., ch. 45. The Union exempted persons who belonged to any

religious sects conscientiously opposed to bearing arms and who themselves were opposed. 13 Stat. 9. See also, 63 Cong. Globe 204–208, 576.

The Selective Draft Law of 1917 also exempted all members of religious sects which were opposed to war in any form, provided that the individual claimants were themselves [illegible]arly opposed. 40 Stat. 78. Again, the debate gave no indication that Congress intended to distinguish between different religious beliefs. See 55 Cong. Rec. 1473–1479.

The Selective Training and Service Act of 1940 broadened the exemption by making it unnecessary to belong to a pacifist religious sect so long as the person's own opposition to war was based on "religious training and belief." 54 Stat. 889. The witnesses who supported this exemption drew no distinctions among religious beliefs; they supported an exemption for all who were torn between the obligations they owed to their religion and those they owed to their government. See the government's brief in *United States* v. *Seeger*, No. 50, this Term, pp. 60–69.

In short, American history shows a consistent pattern of exempting persons from military service who were conscientiously opposed to war because of religious conviction, regardless what their other religious views might be. At times, to be sure, the exemption was limited to members of religious sects holding such views; but no distinctions were then made according to the theology of these sects. If Congress, in defining "religious training and belief" in the 1948 statutes, had denied exemption to some religious con-

scientious objectors while granting it to others, the break with the past would have been a sharp one. Therefore, in the absence of any other indication, Congress presumably intended to continue its historic policy of not distinguishing among religious beliefs. In fact, as we now show, Congress quite clearly indicated that it intended no departure.

B. THE IMMEDIATE HISTORY OF SECTION 6(j)

The Selective Training and Service Act of 1940 granted an exemption to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war." 54 Stat. 889. Thus, Congress explicity provided that only conscientious objectors whose views were based on religious convictions were entitled to an exemption. Moreover, the legislative history underlying that statute shows that Congress rejected suggestions that all conscientious objectors be exempt. See Brief for the United States in *United States* v. *Seeger,* No. 50, this Term, pp. 67–69.

Nevertheless, the Court of Appeals for the Second Circuit concluded that Congress intended, by the term "religious," to include "a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse." *United States* v. *Kauten,* 133 F. 2d 703, 708. On the other hand, the Ninth Circuit rejected the Second Circuit's view and held that "religious training and belief" was written into the statute for the specific purpose of distinguishing between a con-

scientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon "an individual's belief in his responsibility to an authority higher and beyond any worldly one." *Berman* v. *United States*, 156 F. 2d 377, 380, certiorari denied, 329 U.S. 795. It then went on to quote (*id.* at 381) from the dissenting opinion of Chief Justice Hughes (with Justices Holmes, Brandeis, and Stone concurring) in *United States* v. *Macintosh*, 283 U.S. 605, 633–634: "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation."[6]

In 1948, in Section 6(j) of the Universal Military Training and Service Act, Congress confirmed the decision in *Berman* by writing that holding explicitly into the statute. The Senate committee stated (S. Rep. No. 1268, 80th Cong., 2d Sess. 14):

> This section reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 act. Exemption extends to anyone who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service (See *United States* v. *Berman*, 156 F. (2d) 377, certiorari denied, 329 U.S. 795).

The present language, as we have noted, provides for an exemption for any person whose objection to war

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[6] This opinion was in effect adopted by this Court in *Girouard* v. *United States*, 328 U.S. 61, which overruled *Macintosh*.

in any form is based on his "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." The first half of the requirement is taken verbatim from Chief Justice Hughes' opinion in *Macintosh* with a single variation: the opinion states that religion requires belief in "God" while the statute replaces "God" with the words "a Supreme Being." The second half—the rejection of sociological and moral views as the equivalent of religious belief—comes directly from *Berman*. See the opinion below, R. 34.

There can be no question then that Congress deliberately adopted as its test the concept expressed in *Berman:* that religion is "an individual's belief in his responsibility to an authority higher and beyond any worldly one." It did not seek to define the form or nature of this higher authority. In place of the word "God," it used the term "a Supreme Being." There is thus every indication that it did not propose to pick and choose as among various religious beliefs. At the very least, as the court below held (R. 38), this is a reasonable construction of the statute and one which may properly be adopted to avoid the constitutional doubts which would arise from granting exemptions to persons holding certain religious views and not to those holding others.

II

THE SELECTIVE SERVICE AUTHORITIES WERE WARRANTED IN FINDING THAT RESPONDENT'S OPPOSITION TO WAR IS NOT BASED ON AN OBLIGATION SUPERIOR TO THAT ARISING FROM ANY HUMAN RELATIONSHIP

We have shown above that Section 6(j) exempts all persons who are conscientiously opposed to participation in war in any form and who deem this opposition a duty "superior to those arising from any human relation." The Local and Appeal Boards found that respondent did not come within the exemption. It remains only to consider whether this determination has sufficient support, under the standards laid down by this Court, to be sustained. While the issue is admittedly a close one, we believe, contrary to the court below, that the finding was adequately supported by the evidence.

A. Respondent's contention is that he was erroneously classified as I–A by the Local and Appeal Boards. Congress has provided that decisions of these boards as to classification shall be "final." Universal Military Training and Service Act, Section 10(b)(3), 50 U.S.C. App. 460(b)(3). This Court has made clear that these provisions limit very narrowly the scope of judicial review. Thus in *Estep* v. *United States*, 327 U.S. 114, 122–123, it said of the 1940 Act:

> The provisions making the decisions of the local boards "final" means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review

> which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classifications made by the local boards was justified. The decisions of the local board made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant.

This test was approved and applied by the Court in *Cox* v. *United States,* 332 U.S. 442, both by the plurality opinion of Mr. Justice Reed and by the dissenting opinion of Mr. Justice Douglas (joined by Mr. Justice Black). *Id.* at 448–449, 455.[7] The standard of *Estep* was applied under the present statute to a decision of a local board in *Dickinson* v. *United States,* 346 U.S. 389, 394. And later in *Gonzales* v. *United States,* 364 U.S. 59, 65, the Court held that it was applicable to appeal boards.[8] See also *Eagles* v. *Samuels,* 329 U.S. 304, 311. Thus, the standard governing this case is whether the Appeal Board had *any* basis in fact for its classification.

B. The beliefs of respondent are complicated and not readily susceptible of analysis. On the one hand, respondent's statements of his credo often suggested an obligation going beyond his obligation to other human beings. For example, he stated that he believes

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[7] Mr. Justice Murphy, joined by Mr. Justice Rutledge, dissented on the ground that this was too narrow a standard of judicial review. 332 U.S. at 457–458.

[8] The dissenting opinion in *Gonzales* of Chief Justice Warren was on another ground. See 364 U.S. at 65.

in a "Supreme Being," who is "higher than Man," who was the "Creator of Man" in the sense of being "ultimately responsible for the existence of" man, and who was "the Supreme Reality" of which "the existence of Man is the *result*" (emphasis in the original) (R. 44). He said that man must be "partly spiritual" and therefore "partly akin to the Supreme Reality," and that he must "develop his own values with the use of his d[i]vine gift of reason" (R. 45). Life is the most certain thing that exists and it is "sacred" and "a higher value than all the other values" because it was given to man rather than created by man (R. 46). Respondent also said that he believed in "Godness" (which he defined as "the Ultimate Cause for the fact of the Being of the Universe") and that to deny its existence "is equivalent to denying the fact of the Being of the Universe," since "anything that Is, has an Ultimate Cause for its Being" (R. 73).

On the other hand, respondent made statements which suggested that "the Supreme Reality" was nothing more than an appreciation of the importance of man's obligations to his fellow man. He said that "religious experience" means contemplation concerning the ultimate nature of man (R. 44). He believes that the "most important religious law" is that "no man ought ever to wilfully sacrifice another man's life as a means to any other end" (R. 46). He is also of the view that it is impossible to know the nature of the "Supreme Reality" or "Godness" and that an individual "forms (or accepts) his fundamental attitudes to Life" on the basis of what he knows about "this World," which represents "the

limits of what he, as a human being, can know" (R. 44, 73). While agreeing that theism was much closer to the truth than atheism, he said that he disagreed with the former as well (R. 128). He based his opposition to war on sociological and political judgments that war harms humanity (R. 46–48, 51–52).

On the basis of this evidence, the Local Board found that respondent's views were essentially sociological or philosophical or "at most a merely personal moral case," were "not based upon religious training & belief," and did "not reflect duties as dictated by a supreme being superior to those arising from any human relation" (R. 116). The hearing officer and the Conscientious Objector Section of the Department of Justice agreed with the Local Board (R. 122–123). And, on the basis of the Department's recommendation that the exemption should be denied on two grounds—that respondent was not sincere in his beliefs and that, in any event, his convictions were not based on religious training and belief—the Appeal Board denied the appeal. The court of appeals, although it held (R. 30–31) that the evidence would sustain a finding of insincerity, correctly observed that it cannot be ascertained on which of the two grounds the Appeal Board relied. It therefore assumed that the Board relied on the ground that respondent's views were not religiously based.

We believe that there is sufficient evidence to sustain the findings of the Local and Appeal Boards. Admittedly, some of the evidence suggests that respondent does believe in an obligation superior to that owed his fellow human beings. There is,

however, other evidence pointing the other way. While, as an initial matter, this Court might decide that the exemption applies to a person holding respondent's beliefs, we do not think that it can fairly be said that there is no basis in fact for the determinations of the Selective Service authorities. Consequently, under the standard of judicial review laid down repeatedly by this Court, the conviction should stand.

C. The court of appeals observed that respondent's views were similar to those of Paul Tillich, the distinguished Protestant theologian (R. 36-38). We would not question the proposition that one subscribing to Professor Tillich's views is a believer in religion both in the sense of the First Amendment and of the relevant statute. Nor would we deny that there may be points on which there is some suggestion of correspondence between Professor Tillich's views and respondent's. There are also points of difference and many areas of ambiguity. To attempt such a comparison, we believe, is to introduce unnecessary complications which contribute little to the resolution of the issue. The approach of the Selective Service authorities—one which we defend as correct—was to compare respondent's declarations with the statute itself. As we have argued above, such a comparison affords basis in fact for a finding that his views do not meet the standard, *i.e.*, that they rest essentially upon a concept of man's proper relation to his fellow man, rather than upon an obligation to a Supreme Being.

The court of appeals also relied heavily on the principle that statutes should be interpreted to avoid serious constitutional issues (R. 38). However, the constitutionality of Section 6(j) is before this Court in *United States* v. *Seeger*, No. 50, this Term. It is clear that the pacifist involved in that case does not come within the exemption provided by the statute, no matter how broadly it is defined. Therefore, however one characterizes the views of respondent Jakobson, this Court is squarely faced with the issue whether Congress may properly grant an exemption to pacifists whose views are based on their religion and refrain from according a like exemption to those whose pacifism is grounded upon "essentially political, sociological, or philosophical views or a merely personal moral code." Our argument on that issue is elaborated in our *Seeger* brief in which we urge that Congress has provided an exemption for all persons who are religious in the essential sense that that term is used in the First Amendment and that Section 6(j) is a reasonable and proper accommodation of the needs of national defense and of freedom of religion. If we are correct in our constitutional argument, the only question to be decided here is whether respondent Jakobson comes within the statute, *i.e.*, whether his objections to military service are religious objections or, more accurately stated, whether the Board had some basis in fact for finding that they are not. We submit that the administrative resolution of that issue was a permissible one and accordingly should not have been disturbed.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be reversed.

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No 51

UNITED STATES OF AMERICA,

Petitioner,

v.

ARNO SASCHA JAKOBSON,

Respondent.

ON CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statute and Regulations Involved	2
Constitutional Provisions Involved	3
Statement	4
Summary of the Argument	6
ARGUMENT:	
ONE—The recommendation of the Department of Justice to the Appeal Board, that respondent was not opposed to participation in war by reason of religious training and belief, but that his claim was based on a personal moral code, was erroneous as a matter of law	12
A. The history of the Drafts Acts shows the meaning of Religious Training and belief	12
1. The meaning of Supreme Being and belief by Respondent in a Supreme Being. Religions apply different names to Divinity. Respondent did this	19

PAGE

2. Section 6(j) of the Draft Act intended to include political, sociological, or philosophical views and a moral code, if these views were based on belief in Deity, within the meaning of religious training and belief. If the views were essentially political, sociological, or philosophical or a merely personal moral code, with no relation to Deity, then they were not included within the meaning of religious training and belief 34

3. One can believe in Deity without knowing the Nature of Him. Respondent's beliefs were not expressed in an orthodox style, but they were religious. The method of religious expression is different in all religions and sects. So are many of their beliefs. Respondent's beliefs met the standards of recognized religions 57

4. The Department of Justice made two recommendations to the appeal board. When it recommended that Respondent's views were a merely personal moral code, it made an erroneous recommendation. It also recommended that respondent was insincere in his claim. The appeal board did not indicate which recommendation it adopted in making its classification. This made the classification void, since it might have adopted the erroneous ground 61

PAGE

5. The Government Brief concedes respondent had belief in a Supreme Being and had some obligations to Him. Its contentions that there was basis in fact deny the claim of conscientious objector, because respondent showed no superior duties to a Supreme Being are not borne out by the record to which it has made reference. Besides, interpretation of a statute is one of law and not of fact 63

Two—Section 6(j) of the Draft Act is unconstitutional, if the definition of a conscientious objector meant to exclude from recognition the views stated by respondent in his claim for conscientious objector status 71

A. A Statute Should Be Construed to Avoid Grave and Doubtful Constitutional Questions 71

THREE—The 1-A classification was without basis in fact 75

CONCLUSION 78

Table of Cases Cited

Annett v. United States, 205 F. 2d 689 (10 Cir.) 76

Batelaan v. United States, 217 F. 2d 946 (9 Cir.) 62

Berman v. United States, 156 F. 2d 377 (9 Cir.) 6, 7, 15, 16, 19, 20, 34, 35, 36, 42, 43, 60, 72

Bowles v. United States, 319 U. S. 33, 1943 ..... 15, 60

Dickinson v. United States, 346 U. S. 389, 1953 .... 17, 60

Estep v. United States, 327 U. S. 114 76

PAGE

George v. United States, 196 F. 2d 445 (9 Cir.) 8, 17, 36

Jessen v. United States, 212 F. 2d 897 (10 Cir.) 77

Pate v. United States, 243 F. 2d 99 (5 Cir.) 62

Schuman v. United States, 208 F. 2d 801 (9 Cir.) .. 76
Shepherd v. United States, 217 F. 2d 942 (9 Cir.) .. 62
Sicurella v. United States, 348 U. S. 385, 1955 ..61, 62, 67, 68

Taffs v. United States, 208 U. S. 329 (8 Cir.) 62, 68, 77
Tomlinson v. United States, 216 F. 2d 12 (9 Cir.) 77

United States ex rel. Levy v. Cain, 149 F. 2d 338 (2 Cir.) 77
United States ex rel. Phillips v. Downer, 135 F. 2d 521 (2 Cir.) 14, 67, 68
United States v. Bortlik, 122 F. Supp. 225, M. D. Pa. 77
United States v. Erikson, 149 F. Supp. 576, S. D. N. Y. 62
United States v. Hagaman, 213 F. 2d 86 (3 Cir.) .. 62
United States v. Hartman, 209 F. 2d 366 (2 Cir.) 77
United States v. Jakobson, 325 F. 2d 409 (2 Cir.) ..1, 65, 72
United States v. Kauten, 133 F. 2d 703 (2 Cir.) 15
United States v. Macintosh, 283 U. S. 605 35
United States v. Peebles, 220 F. 2d 114 (7 Cir.) 78
United States v. Pekarsky, 207 F. 2d 930 (2 Cir.) 77
United States v. Seeger, 326 F. 2d 846 (2 Cir.) 75

White v. United States, 215 F. 2d 782 (Cir.) 77
Williams v. United States, 216 F. 2d 350 (5 Cir.) 76
Witmer v. United States, 348 U. S. 375, 1955 ..... 77, 78

Ypparilla v. United States, 219 F. 2d 465 (10 Cir.) .. 62

Statutes and Regulations Cited

House of Representatives Report No. 1881—80th Congress, 2nd Session, 1948 16

Senate Report, No. 1268—80th Congress, 2nd Session, page 14, 1948 .....16, 35, 36

PAGE

United States Draft Acts:

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Draft Act of 1940—54 Stat. 889, sec. 5(g) 14, 15, 35
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Supreme Court of the United States

October Term, 1964

No 51

UNITED STATES OF AMERICA,

Petitioner,

v.

ARNO SASCHA JAKOBSON,

Respondent.

ON CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

Opinion Below

United States v. *Jakobson*, 325 F. 2d 409 (R. 27).[1]

Jurisdiction

The Judgment of the Court of Appeals was entered on November 22, 1963. Mr. Justice Brennan extended the time for filing a Petition for Certiorari to and including March 24, 1964. The Petition was filed March 20, 1964. On May 4, 1964 Certiorari was granted.

Jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

[1] Figures preceded by "R." refer to page of Record.

Questions Presented

(1) Whether the recommendation of the Department of Justice to the Appeal Board, on respondent's claim for a conscientious objector classification, that respondent was not opposed to participation in war by reason of religious training and belief, but that his claim was based on a personal moral code, was erroneous as a matter of law.

(2) Whether Section 6(j) of the Draft Act is constitutional, if the definition of a conscientious objector meant to exclude from its recognition the views stated by respondent in his claim for conscientious objector status.

(3) Whether the 1-A classification was without basis in fact.

Statute and Regulations Involved

Section 6(j) of the Universal Military Training and Service Act, 50 U. S. C. A. App. 456(j), insofar as it is pertinent to the facts of this case reads:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code".

Section 1(c) of the Universal Military Training and Service Act, 50 U. S. C. A. App. 451(c) provides:

> "The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a

system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

Selective Service Regulation, 32 C. F. R. Section 1622.1 (d) provides:

"In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal justice."

Selective Service Regulation, 32 C. F. R. Section 1626.25 (d) provides:

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice * * *."

Constitutional Provisions Involved

Article I, Section 8 provides insofar as pertinent here:

"The Congress shall have Power * * *.

* * *

To declare war * * * To raise and support armies, * * * To provide and maintain a Navy; * * *."

Amendment I provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

Statement

Respondent registered under the Draft Act on September 2, 1953, when he was 18 years of age and filed Form 100, the Selective Service Questionnaire, the same day. At that time, he made no claim for conscientious objector deferment, because he was not then a conscientious objector. Respondent made a claim for physical disqualification for a back injury in Series 15 of said Questionnaire (R. 6).

Respondent received various classifications in the processing of his case, as follows: 1-A on September 17, 1953; 2-S on March 31, 1955; 1-A in July 1955; 2-S on September 8, 1955 and 1-A on February 9, 1956, when he left school. Appearing for a physical examination on February 27, 1958, respondent was found acceptable for the armed forces and was so notified on March 26, 1958.

On April 18, 1958, respondent requested Special Form 150 for conscientious objectors, although the Department of Justice wrongly said he had requested it on March 26, 1958, when he was notified of his acceptability (R. 122). About six months before the order to report for a physical examination, respondent asked the Clerk of the local board what was necessary for one to get conscientious objector status. The clerk informed him he had to get letters from ministers, and had to have a long and overtly-provable pacifist background, that he had to belong to one of several accepted pacifist religions and submit proof thereof (R. 13, 14, 133). This caused respondent to be silent regarding his conscientious objector claim, until he later passed the physical examination. At that time, a Quaker unit informed respondent, that his conscientious objector claim was a valid one. Respondent then requested Special Form 150 and filed his conscientious objector claim. To this Form, he subjoined a detailed statement of his position (R. 44-54). At that time, respondent said he could accept non-combatant service. The local board ordered a hearing for December

9, 1958. At this hearing, respondent offered a 43 page statement, wherein he expanded his conscientious objector views and further noted, that he could no longer accept non-combatant service (R. 70, 71). The substance of all the statements on religion submitted by respondent shows that he believed in a Supreme Being, that he had religion and that he was opposed to participation in war in any form by reason thereof. These statements appear in more detail in connection with the main Argument herein, supported by appropriate citations as to religious training and belief, Supreme Being and other matters referred to in the definition of religious training and belief.

After the hearing, the local board found respondent sincere, but it held his views to be essentially sociological or philosophical or at most a merely personal moral code (R. 116). Further, the local board didn't think respondent's views showed duties as dictated by a Supreme Being superior to those arising from any human relation. The local board classified respondent as a conscientious objector for non-combatant service. The Government Appeal Agent said the board members were satisfied that registrant was honestly and properly a case for 1-A-O (R. 118).

When the appeal board received the file on May 4, 1959, it made a preliminary finding that registrant's claim for deferment based on religious training and belief had no merit.

The FBI submitted a report that was totally favorable to respondent's conscientious objector claim (R. 124-126). One of the references said respondent was of a religious nature (R. 126). Another reference said, registrant had said all religion should object to war and killing (R. 126). Registrant had with him at the appeal hearing a member of the faculty of the University of Massachusetts. The hearing officer held respondent's claim of conscientious objector wasn't based on religious training and belief but was a

personal moral code, and that he wasn't sincere in the claim (R. 122). Registrant received a copy of the Department of Justice recommendation, based on the hearing officer's report, and he replied (R. 130-135). In the Reply, respondent again spoke of his belief in a Supreme Being and of his religious position, and he expressed surprise at the charge of insincerity (R. 132). A request for a Presidential appeal was denied (R. 136).

The trial Court erroneously referred to respondent's lack of religious affiliations (R. 21, 25), and held respondent's views were not based on religious training and belief. The Court of Appeals, on the other hand, found respondent had a religion which resembled that of the great theologian, Paul Tillich (R. 36-38). It further said it would not have found respondent insincere on the cold record (R. 31). The Court below wasn't sure that the Court which had rejected the conscientious objector claim of Berman in the case of *Berman* v. *United States*, 156 F. 2nd 377 would have rejected respondent's claim (R. 36). (The definition of a conscientious objector as to religious training and belief was taken from the *Berman* case by the 1948 Act.) The Court further held it had to construe section 6(j) of the Act in favor of respondent's conscientious objector claim because of the grave constitutional questions involved, if his religion were not recognized within the Act (R. 35-38). Holding respondent's claim to be within the purport of the Act, the Court below reversed the Judgment of conviction for failure to take a step forward for induction into the military service (R. 39).

Summary of the Argument

ONE.

Beginning with the 1917 Draft Act, deferments for conscientious objectors were limited to members of pacifist Churches. In 1940, Congress passed a more liberal Act

by abolishing the need to belong to a Church or sect for conscientious objector status. The Court of Appeals for the Second Circuit construed the 1940 Act to allow conscientious objection on the basis of conscience, while the Court of Appeals for the Ninth Circuit disagreed and held religious training and belief meant belief in a Deity. The 1948 Act defined religious training and belief, to mean belief in a Supreme Being, but excluded essentially political, philosophical, and social views and a merely personal moral code. This definition followed the 9th Circuit in *Berman* v. *United States*, 156 F. 2d 377. Respondent believed in a Supreme Being, sometimes calling Him "Supreme Reality", "Godness" or "God". He belonged to no sect. His beliefs were not *essentially* political, philosophical, nor social, nor a *merely* personal moral code, as they were grounded in Deity. His belief in a Supreme Being is shown by his statement that the Supreme Being created man, that the Supreme Reality was the cause of man, that Godness was the cause of the Being of the Universe, and that God is Love. The change of the Name of Deity doesn't render the belief unacceptable, since most other religions use various Names for Deity.

Respondent said he acted by divinely-given reason, and substituted meditation and contemplation for prayers, calling it deep religion. Quotations bear out the truth of this deep religion. He said man is partly akin to the Supreme Reality and spiritual, and for that reason, he ascribes dignity and worth to man. Respondent's beliefs as to the Supreme Being's creation of man, Supreme Reality's being responsible for man's existence, man being partly akin to the Supreme Reality, and Godness being the Cause of the Being of the Universe resemble the teachings of the Old Testament.

Respondent said there were two kinds of relationship to Deity, one be called a vertical transcendental relationship, the other an horizontal transcendental relationship. The

former dealt with man's relation to Deity alone, while the latter entailed man's relation to his fellow-man, because of his belief in Deity.

Respondent's use of the Name, Supreme Reality, wasn't odd. Other religions use the word, Reality. Religions of India speak that way and the Nicene Creed uses the word, Reality. Various religions don't look at Deity in the same way. This is noted by non-Church goers. The words, Supreme Being, don't appear even once in the Old Testament or the New Testament. A strict construction would eliminate believers in the Old and New Testaments. Mohammedans use the Name, Allah, for Deity. We also find "Supreme Cosmic Ruler" and "Ormazd" by Islam and Zoroastrians. When respondent spoke of Godness, he expanded the Name of God. This is similar to saying Godhead or Godhood. As for Supreme Being, many religious and scholarly encyclopedias don't have these words in their indices. The Catholic Encyclopedia speaks of "Reality." The Court below spoke of respondent's belief in a Supreme Being.

Respondent's relation to Deity was responsible for his conscientious objection. He also showed superior duties to Deity. He spoke of the Givens in life, such as are given by Deity, while others are man-made.

The case of *George* v. *United States*, 196 F. 2d 445, 9th Cir. dealt with the meaning of the words political, philosophical, sociological and moral in the Draft Act, and said the Act excluded *certain* beliefs *not related* to religion. All religions make politics, philosophy, sociology, economics and morals a part of their teachings and program. Religious philosophy, sociology, economics, politics and morals are based on Deity, and do not come within the exclusion of the definition of religious training and belief. Philosophy was introduced into Christianity, Judaism and Islam, and the doctrine of Trinity is philosophy. The same goes

for Hinduism. The philosophy of religious experience is concerned about the problems of God and Reality.

Religion in the 20th Century has stressed social, economic, political, philosophical and moral works, as part of the religious Church program. Respondent has shown a similar concern. The Church stressed the social aims of Christianity. An outstanding member saw the Kingdom of God as a gradually evolving social order based on justice and righteousness. He analyzed social religion from the Prophets to Apostolic Christianity. Seminaries established chairs of Christian Sociology and Ethics. Churches adopted social creeds and brought Christian principles to bear on the economic and social order. The Federal Council of Churches adopted a Social Creed and the Catholic Church developed a social program. Ministers cried out for the social teaching of Jesus and the Hebrew Prophets and proclaimed the ethics of a Christian society. The Catholic Encyclopedia speaks of Christian social philosophy from the lips of Christ. Modern sociology doesn't have the same concern for man, that is the concern of the Divine Law. Political Science under Christian influence didn't lose sight of the Divine sanction of civil authority. Social Science grew out of the study and application of moral and social principles derived from the Revelation of God. Results established in the field of social sciences have the greatest importance for Christian ethics.

The Hebrew Religion played an important part in the development of social ideas since the time of Moses. Social progress is the supreme challenge of Judaism and the essence of Hebrew Prophecy. Worship of God must involve service of humanity for Judaism. Judaism stands for human rights at stake in every economic system.

Well-known religions emphasize ethics. The ethics of Jesus was standard Jewish ethics. A moral code grounded on Deity cannot be considered a merely personal one. It is personal, when held by the person without reference to

Deity. Reform Jews accept only the moral laws of the Bible. Catholics share in the moral teachings of the patriarchs and prophets. Congregationalists and Jews put emphasis on ethics in religious teaching.

Respondent showed his religious concern for man and peace. He believes in a "higher law". He believes in "Brotherliness" and "Altruism". The record shows these beliefs are related to Deity. Respondent also believes in the "Inner Light" and a spiritual world, a deeper or ultimate reality which caused him to believe in a Supreme Being.

Respondent said his Godness was similar to Gandhi's real presence of God within. He had read Gandhi and Tolstoi, both religious leaders. While respondent didn't know the nature of Deity, no religion makes claim to such knowledge. His religion corresponds to well-known religions. The various religions express themselves in different ways, and respondent's different kind of expression doesn't detract from his religion.

The recommendation of the Department of Justice was erroneous, when it said respondent's beliefs were a personal moral code, and not religious training and belief. This made the classification void. The recommendation also said the respondent was insincere in his claim for conscientious objector status. The appeal board didn't indicate which of the two recommendations it was following. It might have followed the erroneous recommendation. This again made the classification void. The Court below properly held respondent's classification may have rested on an erroneous ground.

Two.

Section 6(j) of the Draft Act is unconstitutional, if the definition of a conscientious objector meant to exclude from recognition the religious views stated by respondent

in his conscientious objector claim. Besides resembling beliefs of wellknown religions, respondent's beliefs resembled those of Paul Tillich, the noted Theologian.

Under the 1st Amendment, no right can be granted to one religion, that is denied to another. Even the Draft Act, section I(c) requires a fair and just classification, and the Selective Service regulations prohibit discrimination against a sect or religion. The Act permits no distinction between different kinds of belief in a Supreme Being. Otherwise, the Act would prevent the free exercise of religion in violation of the 1st Amendment. This is true, even considering Article I, section 8 of the Constitution, which provides for raising an army and navy. All provisions of the Constitution should be given equal force.

THREE.

The classification was without basis in fact. The local board found respondent sincere after a hearing. The FBI report was entirely favorable to the conscientious objector claim, and all references spoke in favor of the claim. The hearing officer found insincerity on the basis of unwarranted inferences. He gave a wrong date, when respondent asked for form 150, he stressed respondent's seeking 4-F, although he had a severe back injury, when he made that claim, and he failed to take notice of erroneous information given respondent by the Clerk of the local board about six months before the notice to respondent to appear for a physical examination. Respondent was wrongly told by said clerk, that he did not have a valid claim for conscientious objector deferment, as he had to have a pacifist background and letters from ministers. This erroneous information caused respondent to delay making his claim. The hearing officer also referred to respondent asking for I-O after requesting I-A-O. But a registrant may make successive claims to deferment, so long as they are made in good faith. The record shows they were made in good

faith. The Court below thought so, but it said the appeal board had to make the decision.

The fact that the local board found respondent honest in his claim carries weight. The appeal board never made an explicit finding on respondent's sincerity. Respondent's views developed over a long period. He couldn't have made his claim, until it had matured.

ARGUMENT

ONE

The recommendation of the Department of Justice to the Appeal Board, that respondent was not opposed to participation in war by reason of religious training and belief, but that his claim was based on a personal moral code, was erroneous as a matter of law.

A.

The history of the Drafts Acts shows the meaning of Religious Training and belief.

1.

The meaning of Supreme Being and belief by Respondent in a Supreme Being. Religions apply different names to Divinity. Respondent did this.

2.

Section 6(j) of the Draft Act intended to include political, sociological, or philosophical views and a moral code, if these views were based on belief in a Deity, within the meaning of religious training and belief. If the views were essentially political, sociological, or philosophical or a merely personal moral code, with no relation to Deity, then they were not included within the meaning of religious training and belief.

3.

One can believe in Deity without knowing the Nature of Him. Respondent's beliefs were not expressed in an orthodox style, but they were religious. The method of religious expression is different in all religions and sects. So are many of their beliefs. Respondent's beliefs met the standards of recognized religions.

4.

The Department of Justice made two recommendations to the appeal board. When it recommended that Respondent's views were a merely personal moral code, it made an erroneous recommendation. It also recommended that respondent was insincere in his claim. The appeal board did not indicate which recommendation it adopted in making its classification. This made the classification void, since it might have adopted the erroneous ground.

5.

The Government Brief concedes respondent had belief in a Supreme Being and had some obligations to Him. Its contentions that there was basis in fact to deny the claim of conscientious objector, because respondent showed no superior duties to a Supreme Being are not borne out by the record to which it has made reference. Besides, interpretation of a statute is one of law and not of fact.

A.

The history of the Draft Acts beginning with that of 1917 will show the intent of Congress in its use of the words "religious training and belief" in section 6(j) of the present Act.

The 1917 Draft Act, *40 Stat. Chap. 15, sec. 4* limited the deferment of conscientious objectors very narrowly. It granted deferment to those conscientious objectors who were members of historic peace-churches and having beliefs the same as the Church. The Act said it should not be construed:

> "* * * to require or compel any person to serve in any of the armed forces herein provided for who

> is found to be a member of any well-recognized religious sect or organization at present organized and existing and whose existing creed or principles forbids its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or priciples of said religious organizations".

The 1940 Act, section 5(g) took a more liberal view toward conscientious objectors by abolishing Church membership or the need to belong to any sect. It merely required that conscientious objectors have religious training and belief against participation in war. The pertinent part of sec. 5(g) of the Selective Training and Service Act of 1940 54 Stat. 889 read:

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form * * *"

There was no requirement that religious training and belief be according to traditional modes. Touching on this is the case of *U. S. ex rel. Phillips* v. *Downer*, 135 F. 2d 521, 2 Cir., 1943, wherein the Court said:

> "But if a stricter rule than that announced in the Kauten case is called for, one demanding a belief which cannot be found among the philosophers, but only among religious teachers of recognized organizations, then we are substantially or nearly back to the requirement of the Act of 1917 of membership in a well-recognized religious sect or organization whose existing creed or principles forbid its members to participate in war in any form * * * membership in an established church or the following of its beliefs was not intended as a requisite, a view repeated on the floor of Congress * * *"

That belonging to a sect or Church was not required, see the cases of *Bowles* v. *United States*, 319 U. S. 33, 1943 and *Berman* v. *United States*, 156 F. 2d 377, 381, 9 Cir.

In construing the 1940 Act, the 2nd Circuit in the case of *United States* v. *Kauten*, 133 F. 2d 703, 2 Cir. said:

> "(C)all it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse" (p. 708)

The 9th Circuit disagreed with the *Kauten* decision in the case of *Berman* v. *United States*, 156 F. 2d 377, 9 Cir., 1946. The *Berman* case held religious training and belief must be related to a Supreme Being or Deity. The *Berman* case became the authority for the definition of religious training and belief, when Congress, in adopting the 1948 Draft Act, referred to the *Berman* case.

It will be shown, that respondent's beliefs met the definition of religious training and belief, as given in the *Berman* case. The case of *Berman* v. *United States*, 156 F. 2d 377, 9 Cir., *supra*, discloses that philosophy or social belief is not considered religious training and belief without relation to Deity, while a belief in a Supreme Being is religious training and belief. A brief quotation from the *Berman* case at page 380 bears this out:

> "• • • However, no matter how pure and admirable his standard may be, and no matter how devotedly he adheres to it, his philosophy and morals and social policy without the concept of Deity cannot be said to be religion, in the sense of the term as it is used in the statute. It is said in State v. Amana Society, 132 Ia. 304, 109 N. W. 894, 898, 8 LRANS 909, 11 Ann. Cas. 231: 'Such a scheme of life designed to obviate such results (Man's inhumanity to man), and by removing temptations, and all inducements of ambition and avarice, to nurture the virtues of unselfishness, patience, love and service ought not to be denounced as not pertaining to re-

> ligion, *when its devotee* regards it as an essential tenet of their religious faith' ".

Abundant evidence in the Selective Service file shows respondent met the conscientious objector requirements of the *Berman* case and its definition of Religion given at page 381, as expounded in *Funk & Wagnall's New Standard Dictionary* and *The Encyclopedia of Social Sciences.* In meeting the standard of the *Berman* definition, respondent met the requirements of the 1948 Act. The first sentence of the 1948 Act was a reenactment of the 1940 Act, while the second sentence was an adoption of the definition of religious training and belief, as set forth in the *Berman* case. This is verified by the *Senate Report, No. 1268-80th Congress, 2d Session,* at page 14:

> "(j) Conscientious objectors:—This section reenacts substantially the same provisions as were found in subsection 5(g) of the 1940 Act. Exemption extends to anyone, who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service. (See U.S. v. Berman, 156 F. 2d 377, *cert. den.* 329 U. S. 795) * * *"

The House of Representatives *report No. 1881-80th Congress, 2nd Session* sets forth in parallel columns the provisions of the 1940 Act which would be repealed or amended by the 1948 Act. It showed no repeal or amendment of the provisions for conscientious objectors. This would mean that the new language in the 1948 Act added nothing to the 1940 Act.

In *Berman* v. *United States,* 156 F. 2d 377, 9 Cir. the defendant had a high moral and social philosophy against participation in war, but his failure to have belief in a Deity caused the Court to uphold denial of his claim. The Court below noted this (R. 36). At bar, respondent does have religious beliefs against participation in war, based

upon belief in a Supreme Being. Belief in Deity is the dividing line. Such beliefs do not have to be stated in the language of an orthodox religion. The statute is not one of orthodoxy, *Dickinson* v. *United States,* 346 U. S. 389, 395, and adherence to a sect is no longer required. The trial court erred in saying one has to belong to a sect (R. 21, 25).

It should be noted that the 1948 Act uses the words "*essentially* political, sociological or philosophical views or a *merely* personal moral code" (Emphasis supplied). The word "essentially" meant such views without belief in a Supreme Being, and "merely" meant a personal moral code having no relation to a Supreme Being. This is even shown in the case of *George* v. *United States,* 196 F. 2d 445, 450, 451, 452, 9 Cir. At page 452 the Court said:

> "So catholic a definition cannot be considered restrictive because it may not be broad enough to include, and actually excludes *certain* political, sociological, moral or philosophical theories unrelated to religion". (Emphasis supplied)

Thus the Court said, that certain philosophy, etc. do not meet the requirements of the Act, because they have no relation to religion. It meant there is a difference between theories that are based on belief in Deity and those that are not. Since the 1948 Act was a substantial reenactment of the 1940 Act, the following remarks by the Selective Service System appear to be appropriate on this point. See *Special Monograph No. 11, Vol. I "Conscientious Objection"*, Selective Service System, Gov. Printing Office, 1950 at page 141:

> "Additionally and especially in view of the many discussions during the war years on the congressional intent of the 1940 law, a memorandum given to the system by Paul Comly French, field secretary of the Friends War Problems Committee, under date of October 23, 1940, is very significant. This was written as a suggested guide for local boards in class-

ifying conscientious objectors. It is particularly important because it reflects the thinking of an individual who not only held a prominent position among the representatives of a large group of objectors but who also was closely connected with the writing of some of the most essential parts of the conscientious objection provisions. It reads as follows:

"'A person shall be deemed conscientiously opposed to war in any form if in good faith and in conformity to his sense of right and wrong or in conformity to the dictates of his conscience he objects to war or to the preparation for war. The opposition of such persons shall be deemed to be based upon religious training and belief if such opposition is accepted by such individual as a part of the belief, faith or doctrine of any religious denominations, sect or organization of which he is a member, or if arrived at as a result of other religious training as herein defined or as a fixed belief through ethical or moral considerations. Religious training shall include any training whether conducted individually or in classes or groups, through courses of study or individual or other forms of instruction, which has for its purpose the recognition, service and adoration of God or a god and the development of a way of life based upon a conception of man's relation to God or a god and to his fellow men.'".

Hasting's Dictionary of the Bible, Vol. 3 page 849 marks the distinction between "philosophy" and "religion":

"Religion provides the solution which philosophy seeks. That which is the quest of philosophy is the realized experience of Religion * * *"

"* * * Religion discovers the principle for which Philosophy has been seeking, and exhibits it, not as a theory, but as a power, in the freshness and originality of actual life, transforming character and inspiring service * * * Religion, at the same time has to consider the intellectual synthesis to which its own inspiration has given birth".

See also "Empirical Philosophies of Religion", by James Alfred Martin, Jr., 1947, pp. 25, 26:

> "* * * It is here that religion takes the issue out of the hands of philosophy. For religion in its historical forms is empirical; it appeals to the realistic temper: it deals with facts. Its function is not to prove God but to announce Him * * * it appeals only to man's power to *recognize what he needs in what is real*. Hence religion calls upon every man for an individual and ultimate 'I believe' which means * * * 'I see' ".

Respondent used various names to express Deity. He used the words, "Supreme Being", "Supreme Reality", "God" and "Godness". He also referred to his "divine reason". The petition for Certiorari at page 8 didn't think that respondent's concept of "Supreme Realty" or "Godness" came within the purview of "Supreme Being". The following discussion will show respondent did believe in a Supreme Being.

1.

The meaning of Supreme Being and belief by Respondent in a Supreme Being. Religions apply different names to Divinity. Respondent did this.

Respondent said he believed in a Supreme Being (R. 44, 131). In Special Form 150, he said "Being" was the same as "that which is" or "reality", and the Supreme Being is the "Creator of Man". Respondent also indicates that the "Supreme Reality" created man, and that he is the same as the Supreme Being (R. 44). He also used the word "Godness" to show belief in Deity. He says: "Godness is That Which is the Ultimate Cause for the fact of the Being of the Universe" (R. 73). It will be shown that most religions express Deity under a variety of Names and some speak of "Reality" and "Ultimate Cause". The requirement of the Draft Act is belief in Deity and not the kind of Names given Deity. The case of *Berman* v. *United States*,

156 F. 2d 377, *supra*, uses several Names for Deity, such as God, Supreme Power, Supreme Being, Deity, superhuman power and supernatural powers, some of them being quoted from a Dictionary. Respondent refers to Deity as God (R. 129), and even likens his conception of Godness to Gandhi's expression of feeling the "real presence of God within" (R. 127). Respondent's conception of "inner light", "Ultimate Reality" and "Supreme Being" (R. 131) will be shown to correspond to the Quaker belief.

When respondent referred to the Supreme Being as the Creator of Man, he had no reference but to Deity (R. 44). He also said man is the result of the Supreme Reality. These statements of religion can be equated with the Old Testament, Genesis 1:27. This said God created man. Certainly, no one but Deity can be the Creator of man. Respondent's religious quest was to seek knowledge of man who was created by the "Supreme Reality", and he sought this by searching for moral standards which his divinely-given reason could accept (R. 44). When he spoke of the Creator of Man and of divine reason, respondent had no concept other than Deity. The word "divine" refers to Deity. *Webster's 3rd New International Dictionary*, 1964 at p. 663 defined the word "divine":

> "la: of or relating to God: proceeding from God * * *."

The Court below recognized respondent's reference to Deity, when it said he came closer to a traditional reading of "Supreme Being" than did Paul Tillich, because of his acceptance of a Creator and supreme existence (R. 38, note 6).

Respondent substituted meditation and contemplation for prayer and ritual, and called this "religious experience" in the highest sense, involving a relationship with the Supreme Reality and man (R. 44). That meditation and

contemplation are deep religion will be later developed in connection with a discussion of well-known religions.

Respondent further says, that man is partly spiritual and partly akin to the Supreme Reality. Because of this, he ascribes dignity and worth to each person, and says man must be free to develop values with the use of the divine gift of reason (R. 45). The Bible says God created man in His image, Genesis 1:27. Respondent's belief is quite similar. Developing values with the divine gift of reason refers to reason given man by God.

When respondent said Godness is "That Which is the Ultimate Cause for the fact of the Being of the Universe", he wasn't expressing anything odd or strange. This is the effect of the Bible, Genesis 1:1 *et seq.* Other religions say God was the Cause of the universe. This will be developed later.

Respondent says, that to deny Godness is to deny the fact of the Being of the Universe. This certainly refers to the denial of Deity (R. 73).

As for a relationship with Deity, respondent says Godness also exists in feelings, such as a "vertical transcendental relationship" and an "horizontal transcendental relationship" to Godness. The former relationship deals with one's direct contact with Deity, while the latter deals indirectly with Deity and towards humanity (R. 73, 74). Respondent says "God is Love" (R. 129). There's nothing odd about this in connection with religion.

The fact that "Supreme Being" becomes respondent's "Supreme Reality", Godness, and God cannot change his clear reference to the same Deity of all religions. Many "Appellations" are given by well-known religions to Deity. In making reference to Deity and various "Appellations" the "Jewish Encyclopedia", Vol. VI, p. 1, 1906 ed. by Funk & Wagnall shows that respondent's belief in a Cre-

ator, Cause of the Universe and Reality were part of the Hebrew Religion. It says:

> "The Supreme Being, regarded as the Creator, Author and First Cause of the Universe, the Ruler of the world and of the affairs of men, the Supreme Judge and Father * * *. Biblical data: 'God is the rendering in the English versions of the Hebrew "El", "Eloah", and "Elohim"'. The existence of God is presupposed throughout the Bible, no attempt being anywhere made to demonstrate His reality * * *"

The "International Standard Bible Encyclopedja", 1960, Vol. 2, by William B. Erdman Pub. Co., at p. 3(2) gives many attributive Names of God in Hebrew and English. It adds to the above the Names "Elyon", "Shadday", Cur, meaning Rock, Abhir, meaning "the Strong One", melekh or King, Adhon or lord, ba'al or proprietor or master, and Jehovah.

If we couldn't change the words "Supreme Being" to another word to mean Deity, we would have to find fault with the Hebrew Religion to exclude Hebrew conscientious objectors, and with Jesus Christ who used the Name, "Father", to indicate Deity. On this, *"The International Standard Bible Encyclopedia,"* op. cited, at p. 1261 says:

> "4(1) In the teaching of Jesus Christ-God is preeminently the Father. It is his customary term for the Supreme Being, and it is noteworthy that Jesus' usage has never been quite naturalized. We still say 'God' when Jesus would have said 'the Father' * * *. Such is the general character of God as expressed in His Fatherhood, but it is realized in different ways by those who stand to Him in different relations".

Continuing at page 1262:

> "(2) * * * John's one idea, that God is love, is but an abstract statement of His fatherhood * * *.

> "6(2) Love is the most characteristic attribute of Fatherhood * * * Love is not only an emotion of tenderness and beneficence which bestows on men the greatest gifts, but a relation to God which constitutes their entire law of life. It imposes upon men the highest moral demands, and communicates to them the moral energy by which alone they can be met * * *."

Respondent also said "God is Love" (R. 129).

Continuing at page 1265, "The International Standard Bible Encyclopedia", *supra,* says of "New Testament Names of God":

> "The variety of names which characterizes the Old Testament is lacking in the New Testament where we are all but limited to two names, each of which corresponds to several in the Old Testament. The most frequent is the name 'God' occurring over one thousand times and corresponding to El, Elohim, etc. of the Old Testament * * *, but in this true sense it expresses essential Deity * * *."

Continuing at page 1268, it says:

> "The fundamental meaning of 'Godhead' is, nevertheless, no less than that of 'Godhood,' the state, dignity, condition, quality, of a god, or, as monotheists would say, of God * * *. As 'the Divinity,' 'the Deity,' so also 'the Godhead' is only another way of saying 'God' except that when we say 'the Divinity,' 'the Deity,' 'the Godhead,' we are saying 'God' more abstractly and more qualitatively, that is with more emphasis, or at least with a more lively consciousness of the constitutive qualities which make God the kind of being we call 'God.'"

Just as "Godhead and Godhood" are variations of "God," so is respondent's "Godness."

Even the religions of India speak of God in different ways, and they also speak of "Reality." "*A Dictionary of*

Religion & Ethics, ed. by Shailler Mathews & Gerald B. Smith, 1921, says at page 185:

> "IV. God as the Metaphysical Ultimate. The most thoroughgoing elaboration of this conception of God is found in the religious thought of India. In contrast with the more militant attitude of the west, which found expression in the conception of an all-powerful God imposing his purpose on humanity, Indian thought was contemplative and mystical. In the Vedas the gods are expressions of nature forces rather than terrible deities. In the Brahmanas there is a groping after one unified conception of divine Being which shall underly the character of any god. Prajapati is called the 'lord of creatures.' In the Upanishads there is developed the conception of Brahman, who is the ultimate, self-existent *reality*, the unchangeable indissoluable Being, the highest existence that can be conceived. Brahman is the unseen, intangible power which brings into existence all that is and which maintains their existence, but is itself eternally distinct from all phenomenal *reality* * * *. Thus the eternal divine is a spiritual metaphysical something discoverable only as one penetrates far beneath the surface appearance of human experience and apprehends the indefinable, ultimate, all-pervasive, all-inclusive, self-existent power. In the Vedanta philosophy this metaphysical conception of God is characterized by a systematic contrast between the nature of Brahman and the nature of the world of our experience. The nearest approach to a true description of Brahman is attained by saying that it is *not* like anything found in the world. This contrast is pushed so far that the religious man, in affirming the *reality* of Brahman, must also affirm that the world of his empirical knowledge is illusion (maya)". (Emphasis supplied)

> "In the logically complete philosophy, the absolute perfection of God is secured at the expense of any definite positive relationship between God and the world of our common experience. From the point of view of speculative refinement, all finite and anthropomorphic traits are eliminated from the

> *divine* nature. But this very metaphysical completeness of God relegates him to a realm of non-human existence and makes human participation in his being possible only by a rigorous discipline of mystical knowledge which necessarily abandons the world of every-day life. Consequently, the religion of ordinary people consists of trust in the efficiency of popularly conceived deities. Modern Hinduism has so far been influenced by the demands of practical religion that it includes Vishnu, Shiva, and the personalized Brahma as the trinitarian manifestation of Brahman * * *." (Emphasis supplied)

Thus we find that neither Christianity, Judaism nor Hinduism use but one Name to express Deity; nor do they have but one way of belief. For instance, Harry Austryn Wolfson in "*The Philosophy of the Church Fathers,*" 1956, says at page 334:

> "* * * In this Creed, [Nicene] while the individual reality of the three members of the Trinity was stated with unmistaken clearness, no special term is used as a designation of this reality and individuality * * *."

Also, Leo Rosten, in "*Religions in America,*" 1963, says at page 24:

> "Protestantism embraces a variety of doctrines. Some Protestants are closer to Catholic beliefs than others * * *."

At page 115, he says:

> "* * * Lutherans worship God alone. They do not pray to the Virgin Mary or to anyone but God."

Compare this with the statement at page 25:

> "Catholics pray to God through Mary * * *."

Yet the Lutherans, p. 117 op. cited, and the Catholics, p. 23 op. cited, each believe theirs is the only true religion.

And at page 116 the Lutherans say: "God the Father is our Creator." On Christian Science at page 39, we read:

> "What is the Basic Premise of Christian Science?"
>
> "That God is divine Mind, the conceivor of man and the universe, and Mind is all that exists. Mind expresses itself and its expression is man.
>
> "Spirit is eternal and real • • •."

Respondent expresses himself similarly, as to the conceivor of man (R. 44), spirit and reality (R. 127, 131). Christian Science continues at page 40:

> "Man and the universe are made in the image and likeness of the divine Mind, God, which conceives them. Mind is synonymous with Spirit, Soul, Life, Truth, Love, Principle (which means cause or origin)."

Respondent spoke likewise as to Deity (R. 45), Love (R. 129) and Spirit (R. 127, 131). Thus Christian Science uses many Names to express Deity. They should not be excluded from the definition of belief in a Supreme Being for that reason.

Rosten, op. cited, says at page 96:

> "Jehovahs Witnesses believe Jehovah God is the only true God."
>
> "Jehovahs Witnesses believe that Jehovah God and Christ Jesus are two distinct persons and are not combined with a so-called 'Holy Ghost' in one godhead called a 'Trinity.'" (p. 97)

On the question of Trinity, *Rosten,* op. cited, says at page 123:

> "Methodists do not pretend to understand fully the meaning of the Trinity. Who does? Even St. Augustine, after writing the classic exposition of the doctrine of the Trnity, confessed that it still re-

mained a mystery. If God could be fully explained, he would cease to be God."

"• • • We conceive of God as Creator, the First Cause of all things—as God the Father• • •."

"• • • • God is Love • • •." (p. 124)

This doesn't sound different from respondent's "Creator of Man" (R. 44), "The Ultimate Cause for the fact of the Being of the Universe" (R. 73), and "God is Love" (R. 129).

When we read *Rosten*, op. cited, at page 128 we find that religion is not static nor the same with all sects. He says:

"• • • Within the 40,000 American Methodist Churches, there is probably as wide variation of types of thought and worship as there is between Methodists, Presbyterians, Congregationalists and others."

On the question of creation and Reality, *Rosten*, op. cited, refers to Episcopalians at page 362 thus:

"In the light of man's experience of God's working in the world, it is seen that God *is* as He *reveals* Himself. He is *Creative Reality* (God and Father) • • •." (Emphasis supplied to last two words).

So we find that respondent is not innovating, when he uses the word "Reality" to refer to Deity. Even the Unitarians refer to "Reality." See *Rosten*, op. cited, page 352:

"Unitarians follow no formal or central creed. Freedom of belief among Unitarians is broad enough to include agnosticism, humanism, even atheism, on the one hand, and, on the other, a belief in God which can be manifested in a wide range of definitions from that of a 'personal God' to an 'Ultimate Reality.'"

Rosten, op. cited, says at page 158:

"The number of Protestant denominations is less an evidence of the pettiness of Protestants than it is

a testimony of the greatness and manifoldness of God's disclosure of Himself to man."

This ought to allow respondent to express his belief in Deity in one of the manifold ways. Even see what the Unitarians believe at page 187 of *Rosten*, op. cit.:

> "Unitarians worship as earnestly as those of any other faith or church. They worship differently because they believe that every individual has the right to approach ultimate values in his own way, that truth may be found in the teachings of the great prophets of humanity in every age and tradition, and that religious community has the duty of creating such patterns of worship as best serve its needs."

Respondent worshipped by meditation and contemplation (R. 44). This will later be shown to be the deepest form of prayer and respect for Deity. As to Christ, the Unitarians do not believe he is the second Person in the Trinity (*Rosten*, op. cit. p. 189).

Rosten, op. cit., quotes a scientist at page 210:

> "Third, I accept two sets of ideas of God—the everyday concept of an emotional and intuitive God, and the intellectual concept of an abstract God—for the very solid reason that I find both of them personally satisfying. It does not at all worry me that these are two rather different sets of ideas; if an electron can be two wholly inconsistent things, it is a little narrow to expect so much less of God."

Rosten, op. cit., at page 215 speaks of one who says for millions of non-Church goers, that there are many conceptions of God:

> "For strange though it may seem, most of the millions who do not go to Church are religious. Many have a profound faith in God; they simply do not believe that any existing organized religion is a satisfactory expression of God's will. They cannot overlook the many differing conceptions of God—from Christianity to Buddhism and the other great

religions of the East. The monotheism of the Jews is not the same as the Trinitarian conception of Christians. The Protestant conception of man's relation to God is so different from the Catholic that it was one of Luther's chief reasons for revolting from Rome. Baptist conceptions of faith and worship differ as much from Episcopalian as Lutherans differ from Mormons.

"For there are surely many conceptions of God: Matthew Arnold thought of God as the Power-not-ourselves which makes for good; William James believed in a limited but growing God who needs our help in making the good more prevalent. Henri Bergson spoke of the creative force which expresses itself in the evolutionary process. Some scientists speak of a 'cosmic consciousness' which gives meaning to existence. Some philosophers believe in an absolute moral law, embedded in the very structure of the universe. But how many of these conceptions are organized into a formal Church with a rigid ritual and set of ideas about sin or salvation?"

Universalists, Unitarians, Jehovahs Witnesses, Hebrews, Islam and Hindus do not believe in a Trinity, while Catholics and Protestants have varying ideas of Trinity. This certainly doesn't detract from their belief in Deity. Nor does the fact that Christian Scientists believe the Supreme Being is Mind nullify the fact of their belief in a Supreme Being.

If a conscientious objector couldn't deviate from use of the words "Supreme Being," then all Christians and Jews who base their belief on the New or Old Testament would have to be excluded from the Draft Act's deferment. For, not once in either the Old or New Testament do we find the words "Supreme Being." Of course, "Supreme Being" has come to mean Deity or God. If we can substitute, then respondent should be allowed to substitute "Supreme Reality" and "Godness," when he shows, as here, that he means Deity. The use of various words to express

Deity could well be the reason why the Court below expressed surprise at Congress defining "religious training and belief" (R. 32).

Again, if we wanted to be strict in the use of the words "Supreme Being," Mohammedans who use the Name "Allah" for Deity would have to be excluded, especially Syrian Christians who even now use the Name "Allah" for Deity; see "*Encyclopedia of Religion*, Ferm, 1945, page 12, and "*A Dictionary of Religion and Ethics*," op. cit., at page 187:

> "5. High Gods of cosmic scope which are the result of theological or philosophic thought. These are of *three* main types: • • • (b) The spiritual reality behind the phenomenal and illusory world of common life such as the Hindu Brahman • • • the ultimate of the Yomei system of China and Japan • • •.
>
> (c) The Supreme Cosmic Ruler conceived in terms of personality such as Allah in Islam, and Ormazd, the battling god of Zoroastrianism."

The facts that respondent used the word Godness means he had reference to God, or he would not have incorporated the word God, meaning Deity, with his concept of "Godness." This is bolstered by his use of the word "God" a few times (R. 129) and by comparison of his "Godness" with Gandhi's "real presence of God within" (R. 127). When we add "ness" to a word, the addition gives the word an added quality. When respondent added "ness" to make the word "Godness," he was talking of God with a certain value. So say the Dictionaries. See "*Webster's 3rd New International Dictionary*": "ness"—state: condition: quality: degree (goodness) (greatness) (sickness)."

Not only does one look in vain for the words "Supreme Being" in the Old and New Testaments, but even indices of such well-known Encyclopedias as the "*Dictionary of*

the Bible," J. Hastings; *"The International Standard Bible Encylopedia," "Encyclopedia Britannica,"* 1959 ed.; *"Chamber's Encyclopedia,"* 1959; *"Collier's Encyclopedia,"* 1962; *"Jewish Encyclopedia,"* 1906; *"Encyclopedia Americana,"* 1957; *"Encytlopedia of Religion,"* 1945, Ferm; and *"A Dictionary of Religion & Ethics,"* Matthews & Smith, 1921, omit these words. If these words are used, they are used in connection with the discussion of other subjects. For instance, the *"Catholic Encyclopedia,"* 1913, Vol. 14, page 624 uses the words "Supreme Being" in connection with a so-called religious group in France and says:

> "Theophilanthropists, or 'Friends of God and Man', a deistic sect formed in France during the latter part of the French Revolution. The legal substitution of the Catholic Church, the worship of Reason, and the cult of the Supreme Being in place of the Catholic Religion had practically resulted in atheism and immorality."

Even the *"Catholic Encyclopedia,"* 1913, Vol. I at page 217 speaks of Reality:

> "* * * The Absolute in question with Theists is the real not the logical; the Infinite in question is the actual Infinite of realized perfection, not the Infinite of thought * * * Whether our knowledge of this real Absolute, or God, deserves to be characterized as wholly negative, is consequently a distinct problem."
>
> "* * * This is accomplished in turn by denying the limiting modes and imperfect features distinctive of created reality, in order to replace these by the thought of the All-perfect, in the plenitude of whose Being one undivided reality corresponds to our numerous, distinct partial concepts. In the light of this applied corrective we are enabled to attribute to God the perfections manifested in intelligence, will power, personality, without making the objective content of our idea of God merely the human magnified, or a bundle of negations * * *" (p. 218).

Rosten, op. cit., at page 343 compares in parallel columns the definition of God between Protestants, Jews and Catholics. This shows Jews believe in one God "whose reality gives purpose to man and to the world." Then it uses the words "Supreme Being" for God among Catholics, while omitting these words for Protestants and Jews.

"*A Dictionary of Religion & Ethics*," op. cit., at page 183 defines God as "The Supreme Being, the highest object of worship, the creator and source of the existing universe, and the upholder of absolute justice." Respondent believed in God (R. 129), equated his Godness with Gandhi's God within (R. 127), said Godness was the Cause of the Being of the Universe (R. 73) and he contemplated and meditated toward "Supreme Reality" (R. 44). It will be shown that meditation and contemplation are the highest form of worship.

The Court below accepted the fact that respondent believed in God. It said he "comes closer to a traditional reading of 'Supreme Being' than Tillich in one respect, namely, his acceptance of the notion of an original creator and supreme existence, which Tillich finds unacceptable as subjecting God to categories of finitude" (R. 38, note 6).

The above discussion shows that many words can be used to indicate the Name of Deity; and this is so even in one Religion. It isn't the use of words alone, but the intention that tells whether one believes in Deity. The facts at bar show respondent's intention to believe in Deity, when he speaks of a "Supreme Being" a few times, "Supreme Reality," as the creator of man; "Godness," the Cause of the universe, "God, as Love," and "Godness" in comparison with Ghandi's "real presence of God within." He also says man is partly akin to the "Supreme Reality" (this can be compared with Genesis 1:27, that God created man in His Image). Also, when respondent says man can relate to Godness by a vertical transcendental relationship or by a horizontal transcendental relationship, he is refering to a relationship with Deity.

That this relationship to Deity was responsible for respondent's conscientious objection can be seen in Special Form 150 (R. 44-56) and the 43 page statement on religion (R. 72, 83, 86, 93-105, 109, 111-115). In Special Form 150, respondent speaks of the "Supreme Being" and "Supreme Reality," which to him are the same. He also speaks of searching for objective moral standards which his divinely-given reason can accept. He says meditation and contemplation involve the only kind of relationship with the Supreme Reality which is possible, and adds that man is partly akin to the Supreme Reality, something that leads him to ascribe dignity and worth to each individual. He says Life represents all that man is given in an ultimate sense and that death is the loss of things devinely (sic) given to human existence. He calls Life sacred for these reasons: no man ought ever wilfully sacrifice another's life. His conscientious objection is ultimately based on the above convictions (R. 44-56). These statements of belief show not only belief in a Supreme Being, opposition to war by reason thereof, but also superior duties to the Supreme Being. Respondent further shows superior duties owing to Deity by posing the two kinds of relationship to Godness, one a vertical transcendental relationship by which man relates directly to Godness without any concern for his fellow-man, the other an horizontal transcendental relationship by which man relates to Godness, but by which he shows concern for his fellow-man. Respondent adopted the latter relationship (R. 75-83). This relationship causes Respondent to say, that a man relates more closely to Godness who says: "I will not allow myself to be inducted into the armed services because of the way I feel about human life," than a man who says: "I wonder if they'll send me overseas, I always did want to travel * * * " (R. 83). Respondent showed superior duty to Deity, when he says: "A man is obeying a 'higher law' than a social or legal one when he is basing his actions on attitudes that stem most directly from the way he feels about the basic

Givens of Life * * * " (R. 83). For respondent "Givens" comes from Deity, for he says: "Yet, when the individual is dealing with such things as Life, Death, Health, Talent, Love, Time, etc., he is dealing with things that are primarily Given in Existence, while when he is dealing with such things as politics, economics, fashions, etc., he is dealing with things that are primarily Man-made and Transitory" (R. 82).

2.

Section 6(j) of the Draft Act intended to include political, sociological, or philosophical views and a moral code, if these views were based on belief in Deity, within the meaning of religious training and belief. If the views were essentially political, sociological, or philosophical or a merely personal moral code, with no relation to Deity, then they were not included within the meaning of religious training and belief.

This brings us to the question of the meaning of the words "*essentially* political, sociological, or philosophical views or a *merely* personal moral code" (emphasis supplied). While these words appear for the first time in the 1948 Act, they add nothing to the 1940 Act. *Special Monograph No. 11, Vol. 1, "Conscientious Objection," SSS Government Printing Office, 1950* shows that this was intended under the 1940 Act. The Senate and House Reports show the 1948 Act was a substantial reenactment of the 1940 Act. The decision in *Berman* v. *United States,* 156 F. 2d 377, 9th Cir., *supra,* makes explicit what was intended in the use of the above quoted words, and Congress adopted the interpretation of the *Berman* case. First, we can see the 1940 Act meant the same, as expressed in 1948. *Special Monograph No. 11, Vol. 1, "Conscientious Objection,"* op. cit., says at page 68:

> "The first of these issues was whether to cover by the provisions of the Burke-Wadsworth bill conscientious objectors other than those who were mem-

> bers of historic peace churches. Such question came up in considering whether to include members of nonpacifist churches since they ordinarily would hold an individual or minority viewpoint rather than a group or majority approach within their own organizations. This developed into the issue of whether the matter of conscientious objection should be made one at all of personal religious belief. Eventually the discussion turned to conscientious objectors who had arrived at their conclusions by reason of philosophical, political or economic reasoning. The final decision was to eliminate the church membership requirement entirely, but to qualify the provision by making it apply only to a person 'who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form'."

Although the words philosophical and social were not in the 1940 Act, the case of *Berman* v. *United States,* 156 F. 2d 377, 9th Cir. read them into the Act. It made it explicit that a conscientious objector with belief in Deity or in a Supreme Being met the definition of "religious training and belief," while a conscientious objector without belief in Deity or a Supreme Being was without the Act, no matter how high his social or philosophical ideals. The Court said in *Berman* v. *United States,* 156 F. 2d 377, *supra,* at page 381:

> "(P)hilosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute."

This statement was combined with the definition of religion in *United States* v. *Macintosh,* 283 U. S. 605, 633-34, 1931, to make the statutory definition of religious training and belief in the 1948 Act (R. 34). The emphasis was put on belief in Deity. Without such belief philosophy, morals or social policy are not recognized as being within the definition. This is made clear, not only in the opinion in *Berman* v. *United States,* 156 F. 2d 377, but also in the *Senate Report* on the 1948 Act, being *S. Rep. 1268, 80th*

Congress, 2d Session, page 14, 1948 which says no more than that a conscientious objector must have belief in a Supreme Being. See the report at page 16, *supra.* It is also demonstrated in the case of *George* v. *United States,* 196 F. 2d 445, 9th Cir. at page 452:

> "So catholic a definition cannot be considered restrictive because it may not be broad enough to include, and actually excludes *certain* political, sociological, moral or philosophical theories unrelated to religion." (Emphasis supplied.)

The substance and practice of well-known historic religions also emphasize belief in Deity, as being the essential part of religion, and they recognize principles, teachings, philosophy, sociology, morality, politics and economy as religious, when based on Deity. The case of *George* v. *United States,* 196 F. 2d 445, *supra,* used the word "certain" political, etc. theories *unrelated to religion* (emphasis supplied). This shows these theories can be related to religion. The fact that well-known religions make philosophy, sociology, economics, politics and morals part of their teachings and practice accounts for the fact that *Berman* v. *United States,* 156 F. 2d 377, 9th Cir. and the 1948 Act made the belief in Deity the important view. This had to be so because, if the Act meant to exclude philosophical, sociological, economic, political and moral beliefs based on Deity, it would have negated true religious training and belief.

Once a registrant bases his conscientious objector claim on a Supreme Being or Deity, his beliefs are no longer *essentially* philosophy, etc., or a *merely* personal moral code. There is such a thing as Religious Philosophy, and this cannot be called "essentially" philosophy, because it is based on Deity. Professor Harry Austryn Wolfson in his *"Philosophy of the Christian Fathers,"* speaks of Christian Philosophy developing with the various Church Fathers, and shows that the Christians borrowed Greek

Philosophy, so long as it led to belief in and acceptance of God. At page 127 he says:

> "To this school of double faith theory, inaugurated by Clement, we shall try to show, belongs also Augustine. Early in his life, on his way to his conversion, he was told by Simplicianus that Paul's warning against 'philosophy and vain deceit' refers only to a certain kind of philosophy, that which Paul himself describes as being 'after the rudiments of the world,' but does not include the philosophy of the Platonists which he says that it 'lead to the belief in God and His Word'."

At page 11, *Wolfson* says:

> "The reasons for the rise of a philosophized Christianity may be grouped under three headings."

And see page 14:

> "Once philosophy was introduced into Christianity in the second century, it had a continuous history among both the Greek Fathers and the Latin Fathers, though as we shall see, not without occasional outbursts of opposition to it."

Referring to Clement, *Wolfson* says at page 49:

> "Though the prophets and apostles did not express themselves in philosophic terms, yet their teaching, which is 'uttered secretly,' contains philosophic thoughts, and these cannot be explained without a knowledge of the arts of philosophy. * * *.
>
> "* * * But as he proceeds to follow Philo in his philosophical interpretation of the high priests' vesture and the tabernacle and its vessels he adds to them also adventual, eschatological, and preexistential explanations taken from the New Testament."

Wolfson goes on to say at page 361:

> "A more philosophical analogy is advanced by Marius Victorinus, The Unity of the Father, the

> Son, and the Holy Spirit is, according to him, analogous to the unity of the soul * * *. A similar analogy from the human soul and its felicities is advanced by Augustine * * *."

In his book *"Religious Philosophy,"* 1961, Harry A. Wolfson also speaks of philosophy in the three religions of Christianity, Judaism and Islam. In the Preface he says:

> "* * * He is the interpreter of Greek philosophy in terms of certain fundamental teachings of his Hebrew Scripture, whereby he revolutionized philosophy and remade it into what became the common philosophy of the three religions with cognate Scriptures, Judaism, Christianity and Islam * * *."

At page 1, *Wolfson* says:

> "* * * As such, Philo was the first who tried to reduce the narratives and laws and exhortations of Scripture to a coherent and closely knit system of thought and thereby produced what may be called scriptural philosophy in contradistinction to pagan Greek philosophy."

At page 217, *Wolfson* expounds:

> "To religious philosophy, taken collectively, the problem of the veracity of Scripture presented itself in three parts * * *."

At page 218, *Wolfson* says:

> "More of a problem to all those religious philosophies was the prophetic teachings, both the laws of Moses and the teachings of the other prophets. Presented in Scripture as special revelations from God to men, these laws and teachings seemed to them to be in need of arguments in support of their veracity".

Dealing with "Religious Philosophy" and "Reality", *"A Dictionary of Religion & Ethics"*, Shailer Mathews & Gerald B. Smith, 1921, says at page 186:

"4. The Influence of modern philosophy on the conception of God.

* * *

"Religious philosophy, then, undertakes to analyze actual experience, and to suggest tenable inferences from this analysis. God is thus conceived as a reality immanent in experience rather than as a being existing in a realm beyond experience. Hegel defined the Absolute in terms of immanence organizing process rather than in terms of the old immutable, self-sufficient 'transcendant Being'. This new metaphysics creates new problems. Since the content of traditional theology was developed as an interpretation of the transcendant God, it cannot be taken over without change in connection with the idea of immanence. There has been a general period of attempted adjustment of the older doctrinal technique to the newer situation, but there is a growing recognition of the fact that the familiar list of 'attributes' must give way to a mode of analysis appropriate to the immanent and evolutionary conception of ultimate reality.

"5. The influence of changing social ideals on the conception of God.

"* * * The most satisfactory evidence of the reality of God is found in the experience of a cooperating, uplifting 'power not ourselves making for righteousness' ".

We cannot say that religious philosophy and the recognition of Reality do not belong within the mean of religious training and belief. Yet much more could be said, but a brief has its limitations. Still, somewhat more needs be said.

In *"A Dictionary of Religion and Ethics"*, *op. cit. at* page 205, the authors deal with "Hinduism" and refer to philosophy in speaking of Hindu Gods:

"VII. Higher Philosophical Aspects.—There is, in general, in the higher levels of Hinduism a tendency toward a theism in which the world is not

regarded as a machine constructed and set in motion by a God who remains apart from it as a responsible moral governor. The soul alone is responsible, determining its own fate, molding it by its own *karma*. The trend of thought is pantheistic. God is immanent in the universe as well as transcendant, and personal melts into impersonal. The power at work in the universe is the same as the power at work in man, as his soul. There is a sameness or an identity of the two. There may be a complete identity in which the world fades away into a mystical unreality; or God, although transcendant remains immanent in a real world.

"* * * The tendency of Hinduism is toward diversity rather than toward unity * * * India has not had a firm social and intellectual nucleus to hold religion together and prevent excesses. The mystical experience, which, by communion with the mysterious superhuman powers, has raised the intensity of individual or group life, hasn't tried to socialize itself".

See also page 338 on philosophy and reality:

"* * * The philosophy of religious experience is no less vitally concerned about the problems of God, freedom, and immorality in the metaphysical aspects, or about the problems of purposiveness in the universe and the ultimate nature of being than is any form of pure metaphysics. It is no less earnest about the question of the reality of God than about the question of the meaning of God. But it bases the study of God reality upon a prior study of his meaning in experience. However, after having identified itself with this method the philosophy of religion is bound to pursue the question of the reality of God from the empirical center of our thought to its furthest speculative circumferences. The study of the reality of God—his objective reality in personal and social experience, in human history, in the cosmos, in the sphere of ultimate metaphysical existence—thus becomes the most inclusive task of the philosophy of religion and the one that opens

the way to the fullest possible synthesis of religious truth".

Referring to the Mormons, *Rosten*, op. cit. at page 136 says:

> "Brigham Young said: 'Our religion is simply the truth. It is all said in this one expression—it embraces all truth, wherever found in all the works of God and man * * *.
>
> "Since the Latter-Day Saints believes that the 'intelligence' each man attains will remain forever with him, his search for knowledge, for truth, for light is not only a permissible privilege but also an inescapable obligation".

Respondent arrived at certain beliefs that his divine reason showed him. This isn't different from what Protestants do. See *Rosten*, op. cit. at page 154:

> "Are Protestants 'Free' to believe 'Anything'? 'Each individual Christian, as a person endowed by God with freedom, must of course believe what he honestly thinks to be true. But every Church * * * has its own standard of belief which its members are expected to affirm' ".

God speaks to all people, say the Quakers. Again, *Rosten*, op. cit. at page 164 speaks:

> "What does a Quaker believe?
>
> "* * * Quakers believe that God speaks to all men and women through the still, small inner voice. This was true not only in the past. God speaks also in the present; his revelation is continuing. This is the Quaker contribution to religious experience".

Speaking of religion without Church attendance, *Rosten*, op. cit., says at page 216:

> "Do the 66,000,000 Americans who refuse to 'believe' in this way have anything in common—except the fact that they do not go to Church? Yes.

> They share an important attitude—the idea that it is possible to be 'religious', moral, decent, without joining a group and worshipping *en masse*. They believe the individual can get as close to the idea of God as any cleric or institution can bring him. They hold the high faith that men are responsible for what they do with their lives, how they think and live. They do not feel the need for 'official' forgiveness or rituals or catechisms to make them men of virtue. They try to lead a life which is honorable, productive, satisfying, right, good—for them. (It may or may not be right or good for someone else.) A good life, to their minds, does not depend upon church attendance. They believe, as did some of the greatest men the human race has produced, that personal morality is not dependent on organized religion".

The limits of a Brief must curtail further discussion to show that "Religious Philosophy" and "essential" philosophy are not the same. The former is based on Deity and is religious in the fullest sence, while the latter is the use of reason without relation to Deity. The latter would be the exception intended by the Draft Act. This construction of the statute applies equally to political, and social views and to a "merely" personal moral code. The word "merely" meant to denote a moral code arrived at by the person alone without reference to Deity. This will now be stated more specifically to show, that as "essentially" doesn't apply to "Religious Philosophy", so it doesn't apply to political or social ideas which have reference to Deity, and that "merely" doesn't apply to a moral code related to Deity. As the case of *Berman* v. *United States*, 156 F. 2d 377, 9 Cir. said, there must be belief in a Supreme Being. It is inconceivable that one could have a moral, social or philosophical belief based on Deity, and yet have it called "non-religious".

The history and substance of religion bring within their realm philosophy, sociology, morals and political economy.

when they are related to Deity. This was the meaning of *Berman* v. *United States,* 156 F. 2d 377 at page 381 that one's

> "philosophy and morals and social policy without the concept of Deity cannot be said to be religion in the sense of that term as it is used in the Statute."

The religious practice of the Church has demonstrated the soundness of this point of view.

The 20th Century has found Religion stressing more than ever social, economic, political and moral works as part of the Religious Church program. On this score, a "*History of Religion in the United States*", Clifton E. Olmstead, 1960, traces the adoption of such a program by the Church. This was a religious program within the meaning of the Act, because it was based on belief in Deity. In fact, respondent's approach to this program could be equated with that of the history of the Church, because respondent couldn't accept a vertical relationship to God that omitted service to man, while he found it necessary to accept an horizontal relationship to God that involved concern for man. The Church had that problem, when it gave up its pietistic and doctrinally conservative position and sought to help man socially and economically. This is how *Olmstead* approached the subject at page 452:

> "* * * But they were powerless to prevent the infiltration of philosophical and scientific conceptions which were driving many educated Methodists away from traditional theologies to a Social Gospel which frankly regarded the holiness approach as tragically irrelevant to the problems of the time * * *.
>
> "While Protestant conservatives were fighting poverty by means of charitable enterprises, a radical group of thinkers were raising a series of embarrassing questions which would force the Church to rethink its entire social program * * * One move-

ment which was at least partially influenced by the philosophy of these men was the Protestant Social Gospel.

"While the main stream of Protestant Christianity in the United States followed a pietistic and doctrinally conservative position which found no culpability in laissez faire capitalism and conceived of social progress in terms of organized charities, there was a group of clerical leaders, small at first, that was beginning to ask searching questions about the ethics of the social and economic structure of American life * * *" (p. 489).

"Since they were pioneers, they were not always certain of the direction they should take and frequently they were in disagreement as they sought a theology which could speak to the condition of their times * * *. Yet there was no doubt as to their position concerning man. They saw him as a child of God with infinite capacities for moral improvement, who could build a Kingdom of God with life to the full * * *. Their Gospel began with man and moved out to God * * *" (pp. 489, 490).

Continuing at page 491, *Olmstead* says:

"Several events during the 1890's signalized the growth in influence of the Social Gospel. One was the founding of the Brotherhood of the Kingdom, a fellowship of persons committed to the work of Christian social reform which met annually from 1893 to 1915 in New York. The members, of whom Walter Rauschenbusch came to be the most prominent, pledged themselves 'to lay stress on the social aims of Christianity.' Through their individual writings and group resolutions they exercised a powerful influence on the contemporary Protestant mind * * *."

Olmstead says at page 492:

"As a religious thinker Rauschenbusch was essentially conservative * * *. His central concept, however, was the Kingdom of God, which he saw is a gradually evolving social order based on justice and

righteousness. In his first book, *Christianity and Social Crisis,* published in 1907, he gave an historical analysis of social religion as it developed from the time of the prophets to apostolic Christianity. He emphasized Biblical concern for the poor and opprest, a concern which he found to be sorely lacking in the modern Capitalistic system * * *."

Olmstead continues at page 493:

"* * * By the opening of the twentieth century a number of seminaries were following the example of Chicago and were establishing chairs in Christian Sociology and ethics."

"* * * Nevertheless, the movement gradually gained momentum in the great evangelical Churches such as the Methodist, Baptist, Congregational, Presbyterian, and Disciples, all of which adopted social creeds and established agencies to put them into practice. The Presbyterian Church, U.S.A., created a Department of Church and Labor in 1903 and called to its superintendency the Rev. Charles Stelzle, a man thoroughly conversant with the problems of Labor. Seven years later, he founded Labor Temple on the East Side of New York as an attempt to bring Christian principles to bear upon the economic and social order * * *."

At page 494, *Olmstead* goes on:

"The capstone of the process was the issuance by the newly founded interdenominational body, the Federal Council of Churches, of a Social Creed of the Churches in 1908, taken largely from the Methodist pronouncement. This creed was modified by the Federal Council four years later. It called for equal rights for all men, uniform divorce laws, child labor laws, laws against the liquor traffic, protection for workers in their places of employment, old age benefits, labor arbitration, one day of rest weekly, reduction of working hours, safeguards for the rights of workers, guaranteed living wages, and the application of Christian principles to the acquisition and use of property. Thus official ecclesiastical approval was given to a movement which for

more than a generation had been in the process of development * * *."

Showing that Christians didn't confine themselves to theological matters, *Olmstead* spoke thus at page 561:

"* * * A far more influential argument was that Christian ethics had no relevance to social problems and the Churches should confine their pronouncements to theological matters. The latter view gained little acceptance among the clergy, but it was generally adopted by the laity * * *."

Speaking of involvement of the Church in social and economic justice at page 580, *Olmstead* said:

"In this setting the Federal Council of Churches undertook in 1932 to issue a revised version of its Social Creed. On the whole it was a decidedly less ambiguous document, forcefully pointing out the dangers of 'speculation and the profit motive' and the need for 'collective bargaining and social action.' New clauses were added on 'Social Planning and control of credit and monetary systems and economic processes for the common good,' and 'Economic justice for the farmer in legislation, financing of agriculture, transportation, and the price of farm products * * *.' Similarly, the Roman Catholic Church developed its program of social reconstruction through the organ of the Catholic Worker Movement in *1933* and the Association of Catholic Trade Unionists in 1937."

The History of Social Development of Religion is also given in Rowe's, *"History of Religion in the United States"*, 1928, pages 149-153. A short quotation will be made from page 129:

"In all these social movements the Church took little part * * * Ministers, discovering the social teaching of Jesus and the Hebrew prophets cried out for justice and kindness, and proclaimed the ethics of a Christian society. Washington Gladden, Josiah Strong, and Walter Rauschenbusch defined

and explained social Christianity. A 'Brotherhood of the Kingdom' was organized in New York in *1893* among a few ministers who were inspired with the social idea. More Church people opposed than heeded them. But the leaven was at work. Small groups inside the Church circles were determined to bring social questions into the Churches and religion into the solution of social questions."

The "*Catholic Encyclopedia*," Vol. 14, page 117 makes clear the difference between what is "essentially" philosophy, economics, politics and sociology and what is religious philosophy, sociology, economics and politics. Even Christ had a religious philosophy. It says:

"* * * But Christian social philosophy did not, for example, draw its dictum of human brotherhood by induction, it received it directly from the lips of Christ * * *. A Christian sociology, therefore, would be one that carries with it always the philosophy of Christ. It could not look with indifference on the varied and complicated social processes around which we live and move. In all of its study and interpretation of what is going on in life—which is largely the function of sociology—it never surrenders concern for what ought to be, however clearly or dimly this 'ought' is seen. While modern sociology is seeking descriptive laws of human desires and is endeavoring to classify human interests and to account for social functions, it is seeking merely for changes, uniformities and interpretations unconcerned with any relation of these to the Divine law. Christian sociology, on the contrary, is actuated mainly by concern about the relations of social changes to the law and Revelation of God. It classifies processes, institutions, and relations as right or wrong, good or bad, and offers to men directive laws of human desire and distinctive standards of social valuations by which social conduct should be governed.

"Economics as it developed under Christian influences related largely to the search for justice in property relations among men rather than to the

evaluation of property itself. Whatever attempts were made to correlate and interpret economic phenomena, they were inspired largely by the search for justice and by the hope of holding industrial relations true to the law of justice as it was understood. Political science as it developed under Christian influence never lost sight of the Divine sanction of civil authority. The study of the forms and changes of government, little as the underlying processes were then understood, never departed far from the thought of the state as a natural and Christian phenomenon and the exercise of its authority as a delegated power from on high. Thus, whatever there was of social science, rudimentary because of the static view of society which obtained, it grew out of the study and application of the moral and social principles derived from the Revelation of God and presented to the believer through the instrumentality of the Church * * *. Scattered here and there throughout theological and moral treatises in Christian literature there is a vast amount of sociological material, which has its value in our time * * *.

"* * * The results established in the fields of the social sciences will always have the greatest import for Christian ethics * * *.

"Closer relations have been established between Christian ethics and sociology in modern days. Modern social conditions with their rapid changes accompanied by ethical and philosophical unrest, have set up a challenge which the Christian Church must meet without hesitation. The Catholic Church has not failed to speak out definitely in the circumstances. The School of Catholic Social Reform, which has reached splendid development on the European Continent represents the closer sympathy between the old Christian ethics and the later sociological investigation. Problems of poverty seen in its organic relations to social organization as a whole, problems and challenges raised by the modern industrial laboring class, demand for a widening of the defense of individual and social respon-

> sibility to meet the facts of modern social power of whatsoever kind, reaffirmations of the rights of individuals have been taken account of in this whole Christian modern movement with the happiest result. There has been produced an abundant literature in which traditional Christian ethics take ample account of modern social investigations and the theories thus formulated have created a movement for social amelioration which is playing a notable part in the present-day history of Europe" (p. 118).

The Hebrew Religion, as noted above, has played an important part in development of social ideals since the time of Moses. It has preached the dignity of man and concern for his social welfare. See, "*Where Judaism Differed,*" Abba Hillel Silver, 1957 at page 155:

> "Judaism alone preached social progress as a reality, as desirable and as the supreme challenge and opportunity. This is the very essence and meaning of Hebraic prophecy. Judaism did not approve of a spiritual egocentrism which sought fulfillment not in humanity and social enterprise but in detached salvationism, non-action, or other worldliness. It demanded inner change, of course, but it did not lightly dismiss the social imperatives. It did not accept a worship of God which does not involve the service of humanity. In matchless eloquence the prophets of Israel called upon men and women to think less of their rituals and their solemnities, the new moons and sabbaths, and more of the weak and the wronged in their midst, the orphan, the widow, and the oppressed. They urged them to believe that society *can* be improved, if men will but walk in the light of the Lord. Zion *can* be redeemed by justice and righteousness. The good society *can* be built on earth, free from war, from exploitation, from fear (Is. 2:1-4; Mic. 4:1-4)."

Much of this sounds like respondent's belief in a horizontal relationship to Deity, because respondent said he

was concerned with man (R. 81-83). Again *Silver* says at page 157:

> "Judaism's objectives in the quest of the good society are clearly defined; the end of war, universal peace, international cooperation under the reign of law, the eradication of poverty, the security of the individual against all forms of social oppression, the achievement of unity and freedom among men, the practice of compassion, of cleaness and of sobriety in living-all difficult but not impossible ideals."

Silver says at page 50:

> "Among the new highways which Judaism built for mankind, its great road toward social justice is of paramount significance in the history of human development * * *."

And *Silver* adds at page 63:

> "More than social justice, more than personal rectitude were taught by Judaism. It called for a quality of humaneness, tenderness, and magnanimity, a sensitiveness to the hurt, physical or mental, of one's fellow men * * *."

Silver shows an economic system is the concern of religion at page 122:

> "* * * There are essential human rights at stake in every economic system, and religion must remain free to defend these rights for which no system provides adequate guarantees."

Rosten, op. cit., shows the various attitudes of the many religious sects on social, political and economic welfare. Page reference only will be made to avoid enlargement of this brief: *Judaism*, page 107; *Methodist*, page 127; *Presbyterian*, page 129; *Quakers*, pages 171, 174, 175; *7th Day Adventists*, page 180; *Unitarians*, pages 190, 194; and see page 150 saying: "Christians and Jews share the same rich heritage of the Old Testament * * * Central

to both faiths is the firm belief in the democratic ideal as a guide to the political and social order."

Addressing ourselves to the question of personal moral code, we find, in addition to what has been said on morals and ethics heretofore, that the well-known religions put great emphasis on morals and ethics. *Sec. 6(j)* of the Act surely wasn't referring to religious ethics, when it spoke of a "merely" personal moral code. The word "merely" limited the moral code to a code not based on Deity. If the word "merely" didn't mean that, then the law would eliminate every religion from its scope. Judaism, Christianity, Islam, Hinduism and the other great religions put much stress on morals. The Ten Commandments, the laws of the Old Testament, such as those contained in Leviticus, the teachings of the Prophets, the teachings of Christ are overflowing with ethical commands and precepts. For example, *Abba Hillel Silver* in *"Where Judaism Differed"* spoke of Ethics at page 86:

> "The ethics of Jesus, too, was standard Jewish ethics, except as regards nonresistance, nonconcern with the material needs of life, and the love of one's enemies—extreme doctrines not part of normative Jewish thought * * * Jesus' moral code, with the exceptions noted was the code of Pharisaic Judaism in his day. The morality which the Church taught the heathen world—again with the exceptions noted—and which appealed so strongly to it, was Jewish morality, the healthy-minded, clean, and regenerative morality of Israel."

The law would certainly not exclude these moral codes, because they are grounded in religion, or belief in Deity. Likewise, any other moral code grounded in Deity could not be excluded. A moral code grounded in Deity cannot be considered "personal," because it is a code involving the person with Deity. It would be personal, if the holder of the code held it for himself without relation to Deity. The Selective Service file reflects respondent's moral code

in relation to his Creator, the Supreme Being, Supreme Reality, Godness and God.

There is an abundance of literature setting out the connection between morals and religion. Only some of it will be quoted. The *"International Standard Bible Encyclopedia,"* op. cit., Vol. II at page 1256 says:

> "(3) The most distinctive characteristic of Jehovah which finally rendered Him and His religion absolutely unique was the moral factor. In saying that Jehovah was a moral God, it is meant that He acted by free choice, in conformity with ends which He set to Himself, and which He also imposed upon His worshippers as their law of conduct."

See also page 1262:

> "5(1) * * * The blessings of the kingdom are moral and spiritual in their nature and the conditions of entrance into it are moral too (Mat. 8:11; 21:31.43; 23-27.38; Lk. 13-29). They are humility, hunger and thirst after righteousness, and the love of mercy, purity and peace (Mt. 5:3-10; 18:1-3; cf. Mt. 20:26-28; 25:34, 7-21; John 3:3; Lk. 17:20.21) * * *."

Also see a *"Dictionary of Religion and Ethics"*, op. cit., at page 204:

> "III Ethical concepts— * * * The Hindu is filled with a passion for God and for the soul, and disregards worldly comfort and social development. 'Is it the function of religion to produce happiness and success here?' Morality and religion do not have in India the close connection that they have in the West where morality is the centre of religion * * *."

Turning again to *Rosten,* op. cit., we find religion in the practice of morality. See page 107:

> "* * * A Reform Jew accepts as binding only the moral laws of the Bible."

See page 23:

> "* * * The Catholic recognizes the unique religious role of the Jewish people before Christ. He shares their belief in God the Father, in the brotherhood of man, and in the moral teachings handed down by the patriarchs and prophets * * *".

See page 54:

> "What Attitude does the Congregationalists Take Toward the Jew?
>
> "* * * Both have a strongly ethical emphasis in their religious teaching * * *."

Respondent has shown his beliefs in the Selective Service Record. He believes in working for the betterment of man and for peace (R. 45-47, 81-83, 93-95, 102, 107, 111-113). The "Givens" of God, such as Life, Death, Health, Talent, Love and Time are the concern of respondent (R. 82), while he considers all else man-made and transitory. This causes him to put emphasis on his usefulness to mankind and to refuse induction into the armed forces because of the way he feels about human life (R. 83). He says a man is obeying a "higher law" than a social or legal one, when he is basing his actions on attitudes that stem from the way he feels about the basic Givens of life and says his position of Acceptance lead him to his decisions and to conscientious objection (R. 93 subd. 6). A reading of the record on "Acceptance" of life will show that respondent was referring to the acceptance of life as given by God. When one "Accepts," he accepts the Givens of Existence—"Life itself"; this means to affirm the worthwhileness of Life, Health, Talent, Reason, Love, etc. and to oppose what is detrimental to them (R. 94). "Acceptance" includes attitudes of "Brotherliness" and "Altruism," upholding the lives of all other individuals and a Brotherhood to them and a vital concern for their welfare (R. 95). It means that one cannot do the smallest act of kindness toward a single child that doesn't affect

the World for the better, and that one cannot fight a single war that doesn't bring about a moral and intellectual atmosphere which is necessary for breeding more violence (R. 98, 99).

Respondent substitutes meditation and contemplation for prayer and ritual, which he says is religious experience in its highest sense (R. 44).[1] Rightly did respondent call his meditation and contemplation religious in the highest sense, for this is what the "*Catholic Encyclopedia,*" Vol. 4, page 329 says on "Contemplative Life":

> "* * * To seek to know and love God more and more is a duty incumbent on every Christian and should be his chief pursuit, and in this wide sense the Christian and contemplative lives are synonymous * * *.
>
> "* * * The act of contemplation, imperfect as it needs must be, is of all human acts one of the most sublime, one of those which render greatest honor to God, bring the greatest good to the soul, and enable it most efficaciously to become a means of salvation and of manifold blessing to others. According to St. Bernard (De Consider. lib I c. VIII), it is the highest form of human worship, as it is essentially an act of adoration and of utter self-surrender of man's whole being. The soul in contemplation is a soul lying prostrate before God, convinced of and confessing its own nothingness and His worthiness to receive all love and and glory and honor and blessings from those He has created. It is a soul lost in Admiration and love of the Eternal Beauty, the sight of which though but a feeble reflection, fill it with a joy more eloquently than speech, testifies that the soul rates that Beauty above all other beauties, and finds in It the contemplation of all its desires. It is the jubilant worship of the whole heart, mind, and soul, the worship 'in spirit and in truth' of the 'true adorers,' such as the Father seeks to adore Him" (John, IV, 23).

[1] The Record reads "mediation" for "meditation" by error.

And see page 330:

> "* * * Not only does contemplation glorify God, but it is most beneficial to the soul itself. Nothing brings the soul into such close union with God, and union with God is the source of all saintliness. Never so well as when contemplating the perfections of God and the grandeur of His works does man see his own imperfections and failings, the vileness of sin, and the paltriness and futility of so many of his labors and undertakings: and thus nothing so grounds him in humility, the prop and bulwark of every other virtue."

Rosten, op. cit., speaks of meditation by Unitarians at page 192:

> "* * * Some Unitarians prefer to call prayer 'meditation' or 'aspiration' * * *."

Further, respondent said "I must live in harmony with the inner light" (R. 130), and so to live is "to experience reality on its deepest levels" (R. 131). Inner effort makes one aware of the spiritual world. It is in the sense of the spiritual world, that of a deeper or ultimate Reality that respondent believes in a Supreme Being (R. 131). This inner effort and inner light make for the contemplation mentioned above and show the spiritual aspect of life rather than its physical aspect. This reaches into and coincides with the Quaker belief of Inner Light. See *Rosten,* op. cit., at page 166:

> "The 'Inward Light' is not conscience. It is what Quakers call 'that of God in every man.' It instructs and transforms the conscience as the true guide of life. Most often it is termed the 'Inner Light' or the 'Light Within.' It exists in all men and women. It resembles the doctrine of the Holy Spirit. But to Quakers, it is known directly, without any mediation by any prophet or priest. For Friends, it is the source of all reality in religion, leading immediately to the experience of God."

In addition, respondent believed in a reality that transcended but included the physical world. It was tied up with his idea of Godness which to him Gandhi once expressed in terms of an indefinable, mysterious power, unseen, yet felt and that transforms the conduct and character of those who have felt the real presence of God within (R. 127). When respondent tied in his beliefs with Gandhi's, he was expressing religion and belief in a Supreme Being. Gandhi was a religious leader whose works respondent read (R. 132). The "*Encyclopedia Britannica*" 14 Ed. Vol. 10, page 15 says of Gandhi:

> "Gandhi, Mohandas Karamchand * * * and founded a colony for his compatriots on Tolstoian lines near Durban * * *.
>
> "The unlettered people who saw his earnestness and asceticism, and heard his simple eloquence, regarded him as a saint, and invested him with the title of Mahatma, or great Soul * * *."

Respondent also read Tolstoi (R. 105) He too was a religious leader. The "*Encyclopedia Britannica*," 14 Ed. Vol. 22 at page 272 says of Tolstoi:

> "The decisive stage in this conversion, he tells us, was the moment when he realized that the whole message of Christ was contained in the words (Matt. 5:39) 'that ye resist not evil.' This doctrine of non-resistance became the foundation of the creed which soon became known as Tolstoyism.
>
> "* * * Tolstoy gave a complete account of his conversion in 'A Confession' (written 1879, revised 1882, pub. 1884). It is a work of great imaginative sincerity and tremendous rhetorical power worthy to rank by the side of the Confessions of St. Augustine * * *.
>
> "At first Tolstoy took no steps to propagate his new faith. It was not till after the revulsion of social misery he had in a visit to the Moscow slums that his religion assumed a definitely social color-

ing, and not till his intimacy with V. O. Chettkov that 'Tolstoyism' became an organized sect, and began to acquire proselytes. This happened in 1884."

3.

One can believe in Deity without knowing the Nature of Him. Respondent's beliefs were not expressed in an orthodox style, but they were religious. The method of religious expression is different in all religions and sects. So are many of their beliefs. Respondent's beliefs met the standards of recognized religions.

Despite the foregoing demonstration of respondent's religious beliefs and their correspondence with well-known religions, the government's petition for certiorari has argued, that respondent's beliefs were peculiar. In the Court below, the government's brief found fault with respondent's assertion that he didn't know the Nature of God (R. 44) as does its present brief. He knew the Supreme Reality existed, but couldn't know His Nature (R. 44). As a matter of fact, no religion has posited the Nature of God. Even Moses saw God in the Form of a Burning Bush, and He appeared in a cloud, *Exodus 3:2-14.* God described Himself to Moses as "I am that I am." See also *Matthew 17:5,* where God appeared in a bright cloud and a voice came out of the cloud. See also, *"The International Standard Bible Encyclopedia,"* op. cit., Vol. 2, page 1256(a):

> "* * * Divine personality and spirituality are never expressly asserted in the Old Testament, but nowhere in the history of religion are they more clearly asserted. The modes of their expression are, however, qualified by anthropomorphisms, by limitations, moral and physical * * *."

And see page 1263:

> "(7) The abstract being of God and His metaphysical attributes are implied but not defined in the New Testament * * *."

See also, the *"Interpreter's Bible,"* op. cit., Vol 7, page 12:

> "Nowhere in the Bible is God regarded as an object of human speculation. Neither in the Old Testament nor in the New is there any metaphysical definition of God * * * The nearest approach to a definition of God in the Old Testament is to be found in the words: 'I am the Lord thy God who brought thee out of the land of Egypt.'"

See also, Abba Hillel Silver, *"Where Judaism Differed,"* op. cit., at pages 117, 118:

> "* * * It is not within the range of man's capacity to learn the true nature of God or fully understand His ways * * *."

A. J. Heschel has also expressed himself on this point n *"Man is not alone—A Philosophy of Religion"* at page 129:

> "There are no concepts which we could appoint to designate the greatness of God or to represent Him to our minds. He is not a being whose existence could be either confirmed or described by our thoughts. He is reality, in the face of which, when becoming alive to its meaning, we are overtaken with a feeling of infinite unworthiness."

While respondent expresses his religious beliefs in modes generally different from that of well-known religions, yet well-known religions and sects differ in their expressions from each other. There can be no clear-cut conformity in religion. A religious man must be genuine and not try to fit himself into a mold he cannot accept. This doesn't make his beliefs peculiar or irreligious. We can again cite *Rosten*, op. cit., to confirm this:

> "Lutherans do not stress prohibitions or blue laws * * *. Such life should achieve a high ethical level without emphasis on rules and regulations. In this Lutheranism is sharply different from some other forms of Protestantism" (p. 114).

"Congregationalists as children of the Reformation believe that the Church stands under the constant judgment of God and must be willing to reform itself, if need be, in every age" (p. 55).

"If a creed be defined as an attempt to define one's faith in the living God, Congregationalists have been among the greatest creed-makers of history—for each particular Congregation is accustomed to write its own creed" (p. 50).

"Quakers consider themselves a 'third way' of Christians, emphasizing fundamentals differently from Roman Catholics and Protestants * * *" (p. 165).

"Prayer, to the Christian Scientist, is scientific and achieves healing; * * *" (p.41).

"* * * Methodists find no scriptural warrant for the Roman Catholic belief in purgatory" (p. 125).

"What is the Morman Philosophy of Freedom? * * *.

"We claim the privilege of worshipping almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may" (p. 141).

"Unitarians hold that the orthodox Christian world has forgotten and forsaken the real, humane Jesus of the Gospels, and has substituted a 'Christ' of dogmatism, metaphysics, and pagan philosophy. Many Unitarians today prefer to be called 'liberal Christians,' or simply 'religious liberals'. The seeming intolerance and prejudice of many Christians make, it difficult, at times, for Unitarians, to rejoice in the name of 'Christian' (p. 186).

"Do Unitarians Believe the Bible is Divinely Inspired, as 'The Word of God' and Infallible?

"No. The doctrine of revelation of the absolute and indisputable authority of the Bible, is alien to our faith and teaching" (p. 188).

This Court has held, that the Draft Act is not one of Orthodoxy in the case of *Dickinson* v. *United States,* 346 U. S. 389, 395, 1953:

> "• • • That the ordination, doctrine, or manner of preaching that his sect employs diverge from the orthodox and traditional is no concern of ours; of course the statute does not purport to impose a test of orthodoxy."

Besides, as already stated, membership in a sect is no longer required, *Bowles* v. *United States,* 319 U. S. 33, and *Berman* v. *United States,* 156 F. 2d 377, *supra.* The creed of any sect is therefore unnecessary to qualify one for conscientious objector deferment. If it were, there was no purpose in passing the Act without the need to belong to a Church or sect. All that is required is religious training and belief in relation to a Deity. Respondent's record certainly shows belief in a Deity and religious training and belief in relation to Him. Religion is not so severe and harsh, that one must practice various rituals, pray continually and comply with orders of a religious hierarchy. Even the Bible doesn't exact that much. See *John 14:15,* "If ye love me, keep my commandments;" *Micah, 6:8,* "It hath been told thee, O man, what is good. And what the Lord doth require of thee: Only to do justly, and to love mercy, and to walk humbly with Thy God; *Matt. 22:36,* "Master, which is the great commandment in the law? 37. Jesus said unto him, Thou shalt love the Lord they God with all thy heart, and with all they mind. 39. And the second is like unto it. Thou shalt love thy neighbor as thyself." 40. On these two commandments hang all the law of the prophets;" *Isaiah, 1:15,* "Yea, when ye make many prayers, I will not hear; Your hands are full of blood. Wash you, make you clean. Put away the evil of your doings From before Mine eyes, Cease to do evil; Learn to do well; Seek justice, relieve the oppressed, Judge the fatherless, plead for the widow." These are some examples of what religion requires. Respondent met these requirements.

4.

The Department of Justice made two recommendations to the appeal board. When it recommended that Respondent's views were a merely personal moral code, it made an erroneous recommendation. It also recommended that respondent was insincere in his claim. The appeal board did not indicate which recommendation it adopted in making its classification. This made the classification void, since it might have adopted the erroneous ground.

This brings us to the erroneous recommendation of the Department of Justice to the appeal board. The foregoing analysis carries with it the demonstration that the recommendation, in saying that respondent had a personal moral code, was an illegal recommendation, and that it was an erroneous representation of the Act. This illegal recommendation makes the classification void. However, the Department of Justice made an additional recommendation, saying respondent was insincere in his claim (R. 122). The appeal board didn't show, whether it followed the one or the other recommendation. Since the appeal board didn't make clear the ground of its classification, it might have followed the erroneous ground, a procedure which makes the classification void. Such is the rule laid down in *Sicurella* v. *United States*, 348 U. S. 385, 391, 1955:

> "* * * The report of the Department of Justice to the appeal board clearly bases its recommendation on petitioner's willingness to 'fight under some circumstances, namely in defense of his ministry, Kingdom Interests, and in defense of his fellow brethren', and we feel that this error of law by the Department, to which the Appeal Board might naturally look for guidance on such questions, must vitiate the entire proceedings at least where it is not clear that the Board relied on some legitimate ground. Here, where it is impossible to determine on exactly what grounds the Appeal Board decided, the integrity of the Selective Service System demands, at least, that the Government not recommend illegal grounds. There is an important body of lower court cases taking this

> position and we believe that they state the correct rule. Cf. *United States ex rel Levy* v. *Cain*, 149 F. 2d 338, 342, 2 Cir.; *United States* v. *Balogh*, 157 F. 2d 939, 943-44, 2 Cir.; judg. vac. oth. grounds, 329 U. S. 692; *United States* v. *Everngam*, 102 Fed. Supp. 128, (SDWVa 1951)."

This decision was followed in *United States* v. *Erikson*, 149 Fed. Supp. 576, 579, SDNY, 1957:

> "Even assuming, however, that the appeal board could validly have rested its decision on the hearing examiner's impression that the defendant was insincere, there was no evidence that the Board based its decision on this ground rather than on the invalid ground.
>
> • • •
>
> "It can be said with equal force in this case that had the law been accurately stated in the Recommendation of the Department of Justice the decision of the Appeal Board might have been different."

Similar rulings were made in *Shepherd* v. *United States*, 217 F. 2d 942, 9 Cir., 1954; *Batelaan* v. *United States*, 217 F. 2d 946, 947, 9 Cir., 1954; *United States* v. *Hagaman*, 213 F. 2d 86, 89, 3 Cir., 1954; *Pate* v. *United States*, 243 F. 2d 99, 5 Cir., 1957; *Ypparilla* v. *United States*, 219 F. 2d 465, 10 Cir., 1954; and *Taffs* v. *United States*, 208 F. 2d 329, 8 Cir. 1953, cert. den. 74 Supreme Court 532. (See R. 38, 39). While the Court below said there was but one recommendation which was illegal in *Sicurella* v. *United States*, 348 U. S. 385, 392, yet the appeal board could have found *Sicurella* was insincere, as the recommendation wasn't binding on the appeal board, *32 CFR 1626.25*.

The Court below properly held that "Since Jakobson's classification my have rested on an erroneous ground, his conviction cannot stand" (R. 39).

5.

The Government Brief concedes respondent had belief in a Supreme Being and had some obligations to Him. Its contentions that there was basis in fact to deny the claim of conscientious objector, because respondent showed no superior duties to a Supreme Being are not borne out by the record to which it has made reference. Besides, interpretation of a statute is one of law and not of fact.

The Gov. Br.[1] at pages 25, 26 admits superior obligations of respondent to a Supreme Being in at least nine instances. It then goes on to state, that respondent's views were at times personal, and that the local board could believe these were the reasons for the conscientious objector claim. However, the citations to the record do not bear out the government's contentions, as all respondent's views on religion and conscientious objection stemmed from his relation to a Supreme Being.

At page 26, Gov. Br., it says respondent suggested the "Supreme Reality" was nothing more than an appreciation of the importance of man's obligation to his fellow-man; that "religious experience" means contemplation concerning the ultimate nature of man (R. 44). Respondent never said that. What he said was always related to a Supreme Being or his "Supreme Reality." He said "the essence of my religious quest lies * * * in my seeking knowledge about the ultimate nature of *that which was created* by the "Supreme Reality," about Man. It lies in my searching for those objective moral standards which my divinely-given reason can accept as most satisfying the ultimate nature of man." This is a religious position, for it deals not only with man, but man created by the "Supreme Reality" and a use of moral standards stemming from "divine-reason." This can be equated to God's concern for man in the ten commandments, when he told man to obey the Commandments regarding his fellow-man. Because of a "Supreme Reality," respondent had moral obligations to his fellow-man.

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[1] The words "Gov. Br." refer to the Government's Brief.

Page 26 of Gov. Br. also didn't think respondent's "most important religious law"—that "no man ought ever to wilfully sacrifice another man's life as a means to any other end," qualified as a superior duty (R. 46). This statement is related to a Supreme Being, for preceding it we find respondent saying "that Life represents all that Man is ever *given* in an ultimate sense, everything else is created and arranged by man * * * that death means not only the loss of those things that men have contributed to human existence, but also of those that are in my opinion devinely (*sic.*) given to human existence—breath, warmth, the power of reason, the joy of the sense of aliveness, etc. For these reasons I feel, and have for a long time felt, that my most basic value judgment, the one I feel most strongly about, is that Life is sacred; that it is a higher value than all other values * * *." When the context is read in this light, we find respondent expressing a religious statement, for he says Life is given to man and is sacred, and death ends things divinely given to man. This certainly has reference to Deity and isn't personal. He won't kill, because life is given to man, is sacred and belongs to things that are divine.

Further, at page 26, Gov. Br., fault is found with respondent not knowing the nature of the "Supreme Reality" or "Godness." As has been stated under Point One, pages 57, 58, no religion has asserted knowledge of the nature of Deity. This objection is without merit. The Gov. Br., page 26, then asserts respondent is of the view, that an individual forms or accepts his fundamental attitudes to life on the basis of what he knows about this world which represents the limits of what he can know (R. 44, 73). This is not a correct statement of what respondent said. Nowhere at (R. 44) is there such a statement, for respondent speaks of being incapable of knowing the nature of the "Supreme Reality" and His Existence, and his religious quest in seeking knowledge about the nature of man,

created by the "Supreme Reality," his searching for moral standards acceptable to his divine reason, and meditation and contemplation which involve a relationship with "Supreme Reality," or a relation with that created by "Supreme Reality" (R. 44). Nor does a reading of (R. 73) bear out the statement of the government. Respondent spoke of the traditional conception of religion, and says an individual with such a conception accepts certain things to be True about "this world," and certain things to be speculative possibilities about "the Next." From these, the traditionalist forms his fundamental attitudes of Life. But this doesn't apply to respondent who has non-dogmatic beliefs, for in the non-dogmatic idea of religion held by respondent an individual forms his fundamental attitudes only on the basis of certain things "that he feels to represent the limits of what he, as a human being, can know" (R.73).

Page 27, Gov. Br., says respondent disagreed with theism, although it was closer the truth than atheism (R. 128). Respondent didn't disagree, he said "I do not posit the assertion of theism." Yet, respondent can have religious beliefs without adopting theistic beliefs. Theistic beliefs are those handed down by well-known religions. As already pointed out under Point One (*supra*, pp. 41, 42) man can be religious without accepting the creed of a Church. Besides, Paul Tillich said: "Theism in all its forms is transcended in the experience we have called absolute faith • • •." See this in opinion below, *United States* v. *Jakobson*, 325 F. 2d 409, 416 (R. 37 note). Gov. Br. 28 said "We would not question the proposition that one subscribing to Professor Tillich's views is a believer in religion both in the sense of the First Amendment and of the relevant statute• • •."

Again, at page 27 Gov. Br., it is erroneously stated that respondent based his opposition to war on sociological and political judgments that war harms humanity (R. 46-48,

51-52). Respondent said his conscientious opposition to war was based on the above convictions (R. 46). These convictions refer to his belief in a Supreme Being who created man (R. 44), man's spirituality, his kinship with the "Supreme Reality," man's dignity and worth because of this, that Life is all that is ever *given* man (R. 45) for these reasons Life is sacred and no man ought wilfully sacrifice another man's life (R. 46). It is on this basis that the explanation is given as to respondent's opposition to war (R. 46). Even in giving the reasons, respondent says under the subdivisions (1) war is incompatible with my most sacred convictions. (2) even the most depraved individuals have a spiritual aspect, as all men stand in the same relationship to "Supreme Reality," and it is incompatible with his most sacred convictions to reduce the killing of the concrete human being to statistical necessity. (3) we have a system of values which sees Man debased a non-spiritual entity. Wars and their preparation contradict his most sacred convictions. (4) he asks non-combatant classification which is compatible with his deepest convictions, grounded in his religious beliefs (R. 46-48). Also, respondent's reasons for opposing force and war (R. 51-52) are relied on by the government, Gov. Br. page 27, as showing sociological and political judgment. Actually, these reasons are preceded by a statement in answer to Question 5 of Special Form 150 (R. 43) asking "Under what circumstances, if any, do you believe in the use of force?" Respondent replied his attitudes are a direct result of his basic religious convictions relating to the sanctity of Life and the dignity of the individual (R. 50); each of which has already been shown to stem from respondent's belief in a Supreme Being (R. 44-46). He again speaks of the sanctity of life and that life is sacred (R. 51). He then gives his reason why the war situation is not an analogy to a "suppose" situation, and adds because of his attitude toward war, he would not advocate it as use of force (R. 51). This attitude toward war has already been shown to depend on

belief in a Supreme Being. The reasons given cannot be considered political or [illegible]al, because they are based on belief in a Supreme Being. Besides, the question called for a personal answer. Even so, respondent says in subd. (5) "In the war situation, one *can* stand for the sanctity of life, by simply not killing when his most sacred convictions tell him not to kill" (R. 52). And subdivisions (1), (2) (3) and (4) relate to the hurt and death of human beings, something that respondent had made clear he opposed by reason of his belief in "Supreme Reality" (R. 44-46). In addition, the answer to Question 5 is concluded by saying under no circumstances could respondent advocate use of war with disregard for dignity of individuals and all the other characteristics he has given. This constant reference back shows that the entire document must be considered, because it is in the context of the entire document, that respondent makes clear his belief in Deity and Man's position in relation to Deity and refusal to take life for that reason.

On the other hand, even if we were to regard some of these beliefs as personal, the essential religious beliefs against war would still compel a conscientious objector classification. This is so, because the local board found respondent honest (R. 118). When the local board found respondent honest, it meant it accepted his statements on religious opposition to war. Since the local board accepted respondent's religious statements as true, it had the necessary facts to make the conscientious objector classification. The addition of personal reasons for opposition to war could not take anything away from the conscientious objector showing already made. The religious reasons and the personal ones were correlative. There is authority for this in *Sicurella* v. *United States*, 348 U. S. 385 and *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521, 2nd Cir. This Court said in *Sicurella* v. *United States*, 348 U. S. 385, 391:

> "* * * We believe, however, that if the requisite objection to participation in war exists, it makes no difference that a registrant also claims, on religious

> grounds, other exemptions which are not covered by the Act. Once he comes within sec. 6(j) he does not forfeit its coverage because of his other beliefs which may extend beyond the exemption granted by Congress."

See also *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521; 2nd Cir. at 525:

> "The Hearing Officer does refer somewhat to a point here stressed by the Government, namely, that the play contains a criticism of the effects not merely of Fascism abroad, but of finance capitalism in this country, as portrayed by Hungryman himself, with some statements that a division of 'the plunder' must be had. But whatever the weight of the intended criticism, it is not linked to any definite political movement, nor is it clearly enough defined to be considered a political conclusion in itself. And even if it were, it appears but a correlative, and not the defining limitation, of the belief against war. We do not think it can properly be resorted to as overthrowing the force of the latter, * * *."

In view of the above showing, the reference in Gov. Br. page 27 to the local board's finding of respondent's beliefs to be essentially social or philosophical or a merely personal moral code (R. 116), and that his beliefs were not based on religious training and belief, nor did they reflect superior duties, carries no weight. The local board could not make that finding, once it found respondent honest in his religious beliefs. When it made that finding, it meant it was interpreting the statute to exclude the religious views stated by respondent. The fact that the local board said respondent would use limited force in certain cases does not detract from his religious position. The use of force was held permissible by a conscientious objector in *Sicurella* v. *United States*, 348 U. S. 385, 391 and in *Taffs* v. *United States*, 208 F. 2d 329, 8th Cir. 1953, cert. den. 74 S. Ct. 532. Even respondent's use of limited force relates to his duties to a Supreme Being, for he preceded his statement on force with a statement "My attitudes to the

use of force are a direct result of my basic religious convictions relating to the sanctity of Life and the dignity of the individual" (R. 50). And even if in this one instance cited by the board (R. 116), respondent showed a personal belief, it was not enough to bar the religious showings and duties to a Supreme Being already made.

The above argument as to the validity of the local board findings also holds true for the findings of the Hearing Officer and the Department of Justice, Gov. Br. 27 (R. 122-123), for the Hearing Officer and the Department agreed with the local board, thus agreeing with the local board's acceptance of the honest position of respondent in stating his religious beliefs. It didn't mean that the religious statements were rejected and the personal ones accepted, if there were any personal beliefs. It further meant, that the Hearing Officer and the Department interpreted the statute to exclude respondent's religious position. This was an erroneous interpretation of the statute and made the recommendation to the appeal board erroneous. The Government contention that the personal statements alone were accepted by the authorities, for the purpose of showing basis in fact is without merit. As above shown, the religious showing, having been found honest, could not be rejected.

The government contends that this Court might find the "exemption applies to a person holding respondent's beliefs" (Gov. Br. 28), but says there is basis in fact to uphold the finding of the boards. The question of interpreting the statute is one of law, as the boards had to pass on the religious beliefs, as stated by respondent. The local board had accepted respondent's religious beliefs as true, when it found him honest. The Hearing Officer and the Department agreed with the local board on its finding. They even interpreted respondent's statement on Religion in GX 42 (R. 127-129) to be a discourse on his concept of morality and conduct (R. 122), whereas the statement spoke of his religious beliefs in relation to Godness which were

similar to Gandhi's presence of God within and stated "God is Love". Further the report that respondent's beliefs were a moral code was a report on his beliefs *in toto* (R. 122). This meant they all interpreted the religious statements, as not bringing respondent within the definition of religious training and belief. This made the report illegal. This was not a question of basis, for once the religious statements of respondent had been found to be true, the only question was whether they met the statute. The government concedes this Court might find the exemption applies to respondent, and it should so find, in view of the fact that the question of basis in fact is not in the case. The record shows the boards could not have made their findings on the basis of personal reasons of respondent, in the face of their acceptance of his religious statements. In addition, there is no question of basis in fact, because all statements of respondent related to his religious beliefs and duties. The government either said things in its brief that respondent didn't say or isolated them in such a way, that they were taken out of context.

It is important to note that the government concedes some of respondent's views resemble those of the great theologian, Paul Tillich, Gov. Br. 28. These views cited in the Court below are important aspects of religion (R. 36-38). One doesn't have to agree with a great theologian in all views, to be considered religious. The government fails to point out, wherein any differences between respondent and Tillich make him non-religious.

The government's conclusion that respondent's views rest on a concept of man's relation to man, rather than on an obligation to a Supreme Being is contradicted by the record. Respondent sought knowledge about man who was created by the Supreme Reality. He searched for moral standards which his divinely-given reason could accept as most closely satisfying the ultimate nature of man, and his "religious experience" involves the only kind of relationship with the "Supreme Reality," a relationship

with that which the "Supreme Reality" has created (R. 44).. It must, therefore, follow that respondent's relation to man was based on an obligation to "Supreme Reality." This is why he said man is partly akin to the "Supreme Realty," has dignity and worth, that Life is *given*, that Life is sacred and no man ought wilfully sacrifice another man's life (R. 45, 46). It was also why he says:

> "And a man who says: 'I will not allow myself to be inducted into the armed services because of the way I feel about human Life * * * etc.', is relating more closely to Godness than a man who says: 'I wonder if they'll send me overseas; I always did want to travel * * *'." (R. 83)

TWO

Section 6(j) of the Draft Act is unconstitutional, if the definition of a conscientious objector meant to exclude from recognition the views stated by respondent in his claim for conscientious objector status.

A.

A Statute Should Be Construed to Avoid Grave and Doubtful Constitutional Questions.

Congress has spoken in *sec. 6(j)* of the Draft Act, as to what conscientious objectors it meant to defer. Those conscientious objectors who based their opposition to participation in war because of religious training and belief were granted deferment. There is set forth in the Selective Service record of respondent, discussed under Point One, abundant material indicating that respondent had religious training and belief within the meaning of the Act. It has already been shown, that respondent had beliefs that resembled those of well-known religions. In addition, the Court below has taken note of the resemblance of respondent's beliefs to those of the world-renowned theologian, Paul Tillich (R. 36 note 5). Some of these beliefs have been adopted by the Bishop of Woolwich, as stated in the note.

The Court below, in *United States* v. *Jakobson*, 325 U. S. 409, said:

> "* * * The freedom which the Constitution protects is the freedom to exercise the religion of one's choice; a statute limited to certain religions would restrict the free exercise of the disfavored ones. The time honored principle of construing a statute not only to escape unconstitutionality but to avoid 'grave and doubtful constitutional questions,' *United States* v. *Delaware U Hudson Co.*, 213 U. S. 366, 407-08 (1909), thus dictates reading the definition of 'religious training and belief' in sec. 6(j) as broadly as the words permit."

The opinion below has presented the argument on this point in too scholarly a way for the undersigned to attempt to add anything to it, except as noted below.

While respondent doesn't feel it is necessary to reach this point, in view of his explicit showing of religious training and belief under the Statute, as detailed under Point One, yet a consideration of this question, as expounded by Judge Friendly, adds strength to respondent's contentions. Even the Court below thought respondent met the requirements for conscientious objector status, as stated in *Berman* v. *United States*, 156 F. 2d 377, 9 Cir., when it said in *United States* v. *Jakobson*, 325 F. 2d 409 (R. 36):

> "We are by no means certain that the Court that rejected Berman's claim because his evidence showed no belief in 'a supreme power' of any kind would have rejected Jakobson's * * *."

This statement was made after discussing the constitutional question (R. 35).

Moreover, the Draft Act leaves no doubt that all religions must be given equal consideration, for it says in *sec. 1(c) of the Universal Military Training and Service Act*, 50 U. S. C. A. Apx. 451(c):

> "The Congress further declares that in a free society the obligations and privileges of serving in

> the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

Respondent contends that a classification that makes an arbitrary distinction between Supreme Being or merely because of the use of different Names for Deity cannot stand under the provisions of *sec. 1(c) or sec. 6(j) of the Act.* It would be a discrimination to say that respondent didn't believe in the same Supreme Being that recognized religions do, when he said the Supreme Being created man or the "existence of Man is the *result* of the existence of the Supreme Reality" (R. 44) or "rather it lies in my seeking for knowledge about the ultimate nature of *that which was created by* the Supreme Reality, namely, about Man" (R. 44) or "Godness is That Which is the Ultimate Cause for the fact of the Being of the Universe" (R. 73), since that is what all religions say, some in the same words, others in other words. Further, respondent said God is love (R. 129), and he equated his beliefs with Gandhi's "God within" (R. 127). He also referred to the same Deity mentioned in the Old Testament, when he said "For this reason—Man's spirituality—I feel it is valid to say that Man is partly akin to the Supreme Reality" (R. 45). Nothing in the Draft Act allows a board to draw a line that would separate definite beliefs in a Supreme Being into accepted or rejected categories. No one can know the Nature of God and no religion can say it has the only knowledge of God, especially when so many religions and sects disagree on the nature of God and in their creeds, as stated in Point One. The Court below said the Statute doesn't require belief in an anthropomorphic God (R. 35).

Discrimination is not allowed because of creed or membership in a religious organization. This is provided in the Selective Service Regulations, 32 C. F. R. 1622.1(d) which says:

> "In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each registrant shall receive equal justice."

The law should be enforced equally as to all religions under the Statute and Regulations, as well as under the First Amendment to the Constitution. Besides, if the Act is construed to deny equal protection to respondent's religious beliefs, it prevents the free exercise of his religion. Even assuming Congress can draft men for military service under *Article I, sec. 8 of the Constitution*, this Article must be construed co-equally with the First Amendment. All provisions of the Constitution should be so construed, as not to interfere with the others. See, *"Constitutional Law,"* 16 C. J. S. sec. 23, page 92 on this:

> "As far as possible, each provision should be construed so as to harmonize with all the others, with a view to giving effect to each and every provision in so far as it shall be consistent with a construction of the instrument as a whole."

Congress didn't intend a narrow construction of religious training and belief nor of Deity. See opinion below, (R. 36). In fact, it couldn't have so intended, for it would have left the construction of the words "Supreme Being" to the mercy of the draft boards. The Constitution, as well as the Act, requires that a belief in Deity must be given equal recognition with beliefs of well-known religions (Gov. Br. 23). There is no way to construe the words "Supreme Being," so as to include well-known religions and reject those not well-known. Even well-known religions don't agree on what they call "Supreme Being." There is disagreement on the Trinity, on the immanence of God, his personality, and his having no concern for the world, among other things. All of this has been discussed under Point One.

In the companion case of *United States* v. *Seeger*, 326 F. 2d 846, 2 Cir., the government had argued for a liberal construction of the "religious training and belief" clause. The opinion says:

> "* * * In essence, the government appears to argue that the spirit of the 'free exercise' clause is satisfied when religious objectors are permitted to avoid a course of conduct which their religion condemns. Stated in other words, the government's argument is that Congress was merely seeking to give the greatest possible latitude to the free exercise of religion when it enacted the conscientious objector provisions; since the Constitution does not require that a similar freedom be afforded the exercise of nonreligious beliefs, it is reasonable to distinguish between them." (p. 852)

See Gov. Br. in *Seeger*, page 75, last sentence of first full paragraph.

THREE

The 1-A classification was without basis in fact.

The local board heard respondent and found him sincere (R. 118). The F. B. I. investigation produced a report that was entirely favorable to the claim (R. 124-126). Respondent's references spoke highly of him and of his claim (R. 58-61). There was no indication in the report of the hearing officer or the recommendation of the Department of Justice to indicate there was anything false in the claim or that impugned registrant's demeanor or veracity. The hearing officer made a report that culminated in a finding of insincerity, because of inferences that were unwarranted.

The hearing officer said respondent requested Special Form 150 on the date he was informed of his selection (R. 122). This conveyed the impression that respondent was waiting to make his claim, as soon as he would hear of his passing the physical examination. But respondent requested Form 150 nearly a month after notification of

passing the physical examination, after he had inquired of a Quaker organization about the validity of his conscientious objector claim (R. 133). The reason for the inquiry at the Quaker organization was, that a Clerk of the local board had misinformed respondent about his right to make a conscientious objector claim about six months before he took his physical examination (R. 133). There was, therefore, no reason to imply that the claim was made in bad faith, after respondent had passed the physical examination. Registrants may make successive claims for deferment, if they are made in good faith. This also applies to the hearing officer's reference to respondent's request for 1-O classification, after he had requested 1-A-O (R. 122). A further unwarranted finding of the hearing officer was that registrant hadn't given much consideration to his views or thought them through, until he had passed the physical examination. This, again, was caused by the aforesaid erroneous information given by the Clerk of the local board, that respondent didn't qualify for the status of conscientious objector (R. 133; 24). The hearing officer unjustifiably referred to the fact that registrant had frankly hoped he would be 4-F (R. 122). The fact that registrant had a back condition and hoped for deferment on that ground could not be used against him, as he had a right to make that claim for deferment, as any other claim. See *32 CFR 1629*. He had made the claim in form 100, and the government conceded on the trial that the claim wasn't a "phony" one or untrue (R. 8). Since respondent had the right to make the claim of back injury and deferment on that ground, no comment could be made on it, to throw suspicion of insincerity on the claim.

A classification made without basis in fact cannot stand. *Estep* v. *United States*, 327 U. S. 114, 1946. A classification denying conscientious objector status, when all facts favor the claim cannot stand. *Schuman* v. *United States*, 208 F. 2d 801, 9 Cir., 1953; *Williams* v. *United States*, 216 F. 2d 350, 5 Cir.; *Annett* v. *United States*, 205 F. 2d 689, 10 Cir.,

1953; *United States* v. *Pekarsky*, 207 F. 2d 930, 2 Cir., 1953; *United States* v. *Hartman*, 209 F. 2d 366, 2 Cir., 1954; *United States* v. *Bortlik*, 122 Fed. Supp. 225, M. D. Pa., 1954; *Jessen* v. *United States*, 212 F. 2d 897, 10 Cir., 1954; *Taffs* v. *United States*, 208 F. 2d 329, 8 Cir., cert. den. 74 Sup. Court 532.

The local board found respondent honest (R. 118). This carries weight, especially considering the appeal board didn't indicate, that it had found insincerity. Demeanor before a local board is important. So said the Court in *Tomlinson* v. *United States*, 216 F. 2d 12, 9th Cir., 1954:

> "* * * Attitudes and demeanors which develop at the time of such a person's personal appearance may well be controlling factors * * *."

In *White* v. *United States*, 215 F. 2d 782, 9th Cir., 1954, the Court gave weight to the local board observation of registrant. It said at page 787:

> "The action of the appeal board in confirming the classification cannot be said to be without basis in fact in view of the appeal board's knowledge that the local board's determination had been arrived at after its opportunity to observe the registrant's demeanor during his personal appearance * * *."

And see *United States ex rel. Levy* v. *Cain*, 149 F. 2d 338, 341, 2nd Cir., where the Court said:

> "* * * (W)e must hesitate to reverse the Board's findings for a registrant's appearance may be enough to justify distrust in the good faith of his professions, especially upon that issue, comportment and general appearance are often the best index of sincerity * * *."

The Department of Justice didn't take notice that successive honest claims for deferment are permissible. *Taffs* v. *United States*, 208 F. 2d 329, 331, 8th Cir.; *Witmer* v.

United States, 348 U. S. 375, 1955; *United States* v. *Peebles*, 220 F. 2d 114, 118, 7th Cir., 1955.

Registrant said his views upon conscientious objection were formed and developed over a period of time (R. 70). It therefore would not have been possible to present his conscientious objector claim, until he had fully formulated his position. He continued to reflect on the matter, after he had received form 150 (R. 70). This should give no ground for suspicion against the conscientious objector claim.

CONCLUSION

For the reasons heretofore stated, it is respectfully submitted that the judgment below should be affirmed.

September 1964.

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 50

UNITED STATES OF AMERICA,
Petitioner,

v.

DANIEL ANDREW SEEGER.

BRIEF OF THE AMERICAN HUMANIST ASSOCIATION, AS *AMICUS CURIAE*

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INDEX

		Page
Brief, *Amicus Curiae*, of the American Humanist Association		1
Consent of the Parties		1
Interest of the *Amicus*		2
Argument—		
Point I.	Individuals espousing non-theistic religious beliefs should be entitled to claim conscientious objection to war under the First and Fifth Amendments	4
Point II.	The right to claim conscientious objection to war should not be limited to the adherents of theistic and non-theistic religions	8
Conclusion		11

Table of Cases

Cantwell v. *Connecticut*, 310 U.S. 296 (1940) 5
Everson v. *Board of Education*, 330 U.S. 1 (1946) 5
Torcaso v. *Watkins*, 367 U.S. 488, 495 (1961) 4, 5, 9
United States v. *Seeger*, 326 F2d 846, 848 (2d Cir. 1964); 853 ..... 3, 4
Wieman v. *Updegraff*, 344 U.S. 183 (1952) 9
Zorach v. *Clauson*, 343 U.S. 306, 315 (1952) 10

Other Authorities

50 U.S.C. App. Section 456 (j) 7
Camus, *The Myth of Sisyphus* (1955) 2
Dewey, *Experience and Nature* (1925) 3

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---

BRIEF *AMICUS CURIAE* OF THE AMERICAN HUMANIST ASSOCIATION

CONSENT OF THE PARTIES

The Solicitor General has expressed his consent in writing for the filing of the proposed brief as has counsel for the defendant-respondent and these written consents are on file in the office of the clerk of this court.

INTEREST OF THE *AMICUS*

The American Humanist Association is an organization of individuals who believe that for man to realize his potential he must apply reason and the principles of science to the solution of his personal and social problems. Humanists cannot with integrity accept the traditional Judeo-Christian concept of a Supreme Being. The purpose of the American Humanist Association is to spread the significance of humanism and to service the needs of humanists. Accordingly, the Association is currently involved in the defense of freedom of thought, human rights, church-state relations, planned parenthood, funeral reform, United Nations activities, the maximum use of science for human welfare, social welfare, ethical problems and the ethical education of young people.

Members of the American Humanist Association come from many professions and academic disciplines. They involve themselves with the Association through committee work, the Association's publications, local discussion groups, conferences and research projects. The Association is one of almost thirty similar organizations throughout the world which have combined to form the International Humanist and Ethical Union.

Humanists believe that mankind has only itself to rely upon and only this life with which to be concerned. Therefore, humanists would agree with the philosopher, Albert Camus, that:

> If there is a sin against life, it consists perhaps, not so much in despairing of life as in hoping for another life and in eluding the implacable grandeur of this life (*The Myth of Sisyphus*).

This interest in improving our present life has led humanists to be concerned about world peace. Many

humanists, though by no means all, have reached the conclusion that any war and the participation in any armed conflict is morally unjustifiable. These humanists sincerely believe that no circumstance could justify harming the dignity and worth of any individual. This is at the center of many humanists' moral concern. These humanists thoroughly agree with Daniel Seeger's statement as quoted by the Court of Appeals.

> It is our moral responsibility, to search for a way to maintain the recognition of the dignity and worth of the individual, the faith in reason, freedom, and individuality, and the opportunity to improve life for which democracy stands . . . I cannot participate in actions which betray the cause of freedom and humanity. Experience with the past indicates that our armament policy will lead to war, and war, with its indiscriminate crushing of human personality, cannot preserve moral values . . . To resort to immoral means is not to preserve or vindicate moral values, but only to become collaborators in destroying all moral life among men. *United States* v. *Seeger*, 326 F2d 846, 848 (2d Cir. 1964).

The challenge to humanists was formulated by one of the founders of the American Humanist Association, John Dewey. This great educator and philosopher stated:

> Nothing but the best, the richest and fullest experience possible, is good enough for man (*Experience and Nature*).

Humanists accepting this principle cannot engage in the destruction or degradation of human life. Therefore, many of these individuals have conscientious objections to war.

This Association has filed briefs *amicus curiae* in other cases before this Court involving the separation of church and state.

ARGUMENT

I

Individuals Espousing Non-Theistic Religious Beliefs Should Be Entitled to Claim Conscientious Objection to War Under the First and Fifth Amendments.

In 1961 this Court very clearly announced the following principle:

> We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion," . . . neither can aid those religions based on the belief in the existence of God as against those religions founded on different beliefs. *Torcaso* v. *Watkins,* 367 U.S. 488, 495 (1961).

Moral sanctions can be just as powerful among adherents of religions not teaching a belief in a Supreme Being as among those who profess a belief in God. The Court below observed:

> . . . For many in today's "skeptical generation," just as for Daniel Seeger, the stern and moral voice of conscience occupies that hallowed place in the hearts and minds of men which was traditionally reserved for the commandments of God . . . When Daniel Seeger insists that he is obeying the dictates of his conscience or the imperatives of an absolute morality, it would seem impossible to say with assurance that he is not bowing to "external command" in virtually the same sense as is the objector who defers to the will of a supernatural power. *United States* v. *Seeger,* 326 F2d 846, 853 (2d Cir. 1964).

History has often been advanced by men who, after searching their consciences in accordance with their principles, have acted upon a moral decision. The Protestant

reformer, Martin Luther, said, "Here I stand." The Catholic lawyer, Thomas Moore, and the Jewish philosopher, Baruch Spinoza, maintained similar firm positions. In this country we would not think of denying a man the right to act in accordance with his religious views if those religious beliefs were based upon a belief in a Supreme Being. Failing to approve the same process if it is applied by a person who does not accept a belief in a Supreme Being is to deny to some the due process and equal protection of the law as guaranteed by the Fifth Amendment of the United States Constitution. If the government condoned the stand of conscience only when engaged in by an individual accepting a belief in a Supreme Being, then that particular religious belief is being aided by the Federal Government and the "establishment of religion" clause in the First Amendment is being violated. *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Everson* v. *Board of Education*, 330 U.S. 1 1946); *Torcaso* v. *Watkins, supra.*

Objection must be taken to the government's interpretation of the *Torcaso* case (Brief for the United States, p. 75). Nowhere in the *Torcaso* decision is there contained the erroneous statement that Buddhists, Taoists, Ethical Culturists, or humanists, "believe that man has definite obligations to a *force superior to himself*" (emphasis ours). Indeed, it is the study of man and his potentialities that leads humanists and others to their moral codes.

The government in its brief, has attempted to separate moral codes from religion.

> As a matter of logic and definition, conscience and religion cannot be equated for purposes of the First Amendment. Conscience means a sense of good and evil; religion means a system of faith and worship regarding "God, or a god." (p. 76)

Moral codes come either from reason or from revelation. But living in accordance with a moral code is the same process, regardless of the source of the code. If we are not to be concerned with conscience, then we must say to a Jehovah's Witness or a Quaker, "Your opposition to war comes from the teachings of your religion. But your decision to follow these religious teachings is merely a matter of conscience, simply a 'sense of good and evil' and should, therefore, be ignored."

But the government does not suggest making such a statement to those whose moral codes come from divine revelation. These codes fall within what the government terms the "religious traditions of the American people."

> In determining whom to assign to noncombatant national service because of conscientious opposition to participation in war in any form, Congress had strong reason to take into account the deepseated convictions of the American people. (p. 82)

It would appear that the government is suggesting that Congress should consider traditional religious views, but that it may ignore other views. A young man whose deep and sincere moral convictions make impossible his conscientious involvement with the armed services is to be told, "For the purposes of being drafted, you are part of the United States, but your moral code is not to be considered, because your government has only to consider moral codes derived from traditional religion."

Clearly, the government's reasoning would result in a preference for those Americans whose moral codes are based upon belief in a Supreme Being. That this is the government's position is obvious from its brief.

> The core of the exemption for conscientious objectors is the unwillingness of the Congress, speaking the true will of the American people, to punish as a criminal

> a man who refuses to perform military service in obedience to what he believes is the command of a God transmitted by divine revelation. (p. 35)

It is respectfully submitted that it should not be the business of government to judge the relative merits of the sources of moral codes and to favor those based upon belief in a Supreme Being over those coming from the "stern and moral voice" of reason and reflection.

Sometimes the fear is expressed that many who want to avoid the draft for reasons other than those dictated by morality and conscience will claim the status of conscientious objector. This should not affect the constitutional issue involved. There are provisions within the law for determining the sincerity of one claiming to be a conscientious objector. 50 U.S.C. App. Sec. 456 (j). The British appear not to have suffered in basing their exemptions solely on the applicant's sincerity of belief in opposing war in any form. It might likewise be observed that it would be simpler for a person wishing to avoid military service for such reasons to join one of the recognized theistic religions professing an objection to war. There has, however, been no evidence that this latter phenomenon has occurred.

The history of exemption from military service may be traced back to colonial times. It suffices here, however, to go no further than the Act of 1917. Congress then exempted regular or ordained ministers of religion, students in theological schools, and persons who belonged to a group which forbade participation in war, and whose own religious convictions were in accord with those of the group.

In 1940 Congress made a transition from exemption based upon group consideration to individual conviction, but a conviction that had to be based or grounded in "religious training and belief."

In 1948, Congress added a restrictive and narrowing construction to "religious training and belief" by requiring it to be related to a Supreme Being. Congress thereby set apart those who believed in a Supreme Being from those who did not accept such a belief. Congress went even further and distinguished between religion and philosophy, and between a religion as distinct from a personal moral code.

It has been argued that Congress could legitimately exempt from military service those who felt that they would be punished by a supernatural power if they took part in such a program. Some individuals object to fighting because of fear of divine reprisals. Others object to being personally required to assist in what they consider will be the destruction of the moral and perhaps physical existence of man. If the government favors one type of objection over the other, it is making a preference in favor of a particular religious opinion. Is it the function of government to determine that the fear of divine punishment is more significant than other forms of moral sanction? If it is, then the equal protection of the law is not being extended to cover the belief systems of those not accepting a belief in a Supreme Being and it would appear that the government is aiding theistic religions.

II

The Right to Claim Conscientious Objection to War Should Not Be Limited to The Adherents of Any Religions, Either Theistic or Non-Theistic.

"Religion" is a very difficult word to define. To some it means simply the duty between the created and the creator. To most people in this country it signifies an obedience to the commands of a supernatural Supreme Being. But "religion" can also mean any system of ideas

which gives perspective to life, the emotional involvement with a philosophical point of view, or simply the search for meaningful ethical standards.

Many who would technically come within the definition of a non-theistic religion as defined in *Torcaso* v. *Watkins, supra,* are unschooled in these philosophical distinctions and for one or another reason would not label themselves religious, even though that term would be legally, philosophically and anthropologically applicable to them. The Court below specifically did not concern itself with the non-religious conscientious objector. It interpreted Mr. Seeger's views as broadly religious rather than secular or merely philosophical. We believe that such an interpretation still leaves the avowed non-believer in comparative jeopardy, particularly when his view cannot be embraced within some recognized category or school of thought.

It is possible to conceive of a sincere person whose thoughts were not sufficiently crystallized to provide for the overall philosophical view which is defined as a non-theistic religion under *Torcaso* v. *Watkins, supra.* Not only did this Court in *Torcaso* v. *Watkins* announce that the government could not favor a theistic religion over a non-theistic religion, but it also declared:

> Neither the State nor the Federal Government can constitutionally pass laws nor impose requirements which aid all religions as against non-believers. (495)

If the government engaged in the practice of allowing adherents of theistic and non-theistic religions the privilege of acting in accordance with their conscience and of denying this right to "non-believers," certainly the government would be imposing requirements which aid all religions as against non-believers.

In *Wieman* v. *Updegraff,* 344 U.S. 183 (1952) this Court indicated that Congress could not make a law providing

that ". . . no Federal employee could attend mass." It would appear inconsistent to allow the government to recognize only the moral convictions of the adherents of theistic and non-theistic religions.

Our Constitution was based on democratic principles which themselves dictate a government free from any partiality in religion. If a religious bias finds its way into governmental practices, some Americans will inevitably be deprived of the democratic right to live their lives in accord with their own ideas. Those most likely to suffer the immediate deprivation of this basic right would be the "non-believers." In the end, however, all Americans would suffer from this important infringement upon the democratic principle. This thought was expressed by Mr. Justice Jackson in his dissenting opinion in *Zorach* v. *Clauson*, 343 U.S. 306, 315 (1952).

> The day that this country ceases to be free for irreligion, it will cease to be free for religion—except for the sect that can win political power . . . If we concede to the State power and wisdom to single out "duly constituted religious" bodies . . . It would be logical to also uphold the power and wisdom to choose the true faith among those "duly constituted."

A young man might well believe that his involvement with a military service would assist in the destruction of civilization. Such a sincere belief would raise the strongest type of moral and conscientious objection to war. We are told that we live in a powerful nation. It is hoped that our nation is powerful enough not to require that this young man ignore his conscience.

CONCLUSION

For The Reasons Stated It Is Respectfully Submitted That The Judgment Of The Court Below Should Be Affirmed But It Is Also Submitted That The Decision Of This Court Should Allow A Conscientious Objection To Be Claimed Not Only By The Adherents Of Theistic And Non-Theistic Religions But By The "Non-Believer" As Well.

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IN THE

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Petitioner,

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DANLEL ANDREW SEEGER,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE AMERICAN ETHICAL UNION AS *AMICUS CURIAE*

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TABLE OF CONTENTS

	PAGE
THE INTEREST OF THE AMERICAN ETHICAL UNION	1
ARGUMENT—The First and Fifth Amendments prohibit discrimination against conscientious objectors who hold non-theistic beliefs	4
A. The Beliefs of the Non-Theistic Religions	6
B. The History and Development of Non-Theistic Religion	11
C. Non-Theistic Religions Today	13
D. First Amendment Protection of Non-Theistic Religion	14
E. Lack of Reasonable Basis for Discrimination	16
CONCLUSION	23

TABLE OF AUTHORITIES

Cases:

Berman v. United States, 156 F. 2d 377 (9th Cir. 1946) (rendered by a divided court), *cert. denied*, 329 U. S. 795 17

Braunfeld v. Brown, 366 U. S. 599 16

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McGowan v. Maryland, 366 U. S. 420 14

Peter v. United States, 324 F. 2d 173 (9th Cir. 1963) 18

Phillips v. Downer, 135 F. 2d 521 (2d Cir. 1943) 18

PAGE

Sherbert v. Verner, 374 U. S. 398 16

Torcaso v. Watkins, 367 U. S. 488 ..... 2, 5, 6, 14
Thomas v. Collins, 323 U. S. 516 15

United States v. Jakobson, 325 F. 2d 409 (2d Cir. 1963) 18
United States v. Macintosh, 283 U. S. 706, dissenting opinion of Hughes, C. J. 15

Washington Ethical Society v. District of Columbia, 249 F. 2d 127 (D. C. Cir. 1957) 3, 15
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21 Dictionary of American Biology (Starr ed. 1944)	2
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PAGE

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BRIEF FOR THE AMERICAN ETHICAL UNION AS *AMICUS CURIAE*

The Interest of the American Ethical Union

This brief is submitted on behalf of the American Ethical Union with the consent, filed with this Court, of both parties.

The American Ethical Union is a federation of the Ethical Culture Societies and Fellowships in the United States, which, collectively, constitute a liberal religious fellowship know as the "Ethical Movement" or the "Ethi-

cal Culture Movement". The first Ethical Culture Society was founded in New York City in 1876 by Dr. Felix Adler. The Movement has had a marked growth in recent years. Since 1949 membership has doubled and the number of Societies and Fellowships has increased four-fold.

There are today thirty Societies and Fellowships of the American Ethical Union in eleven states and the District of Columbia. Through its membership in the International Humanist and Ethical Union, the American Ethical Union is part of a world-wide association of Humanist and Ethical Culture groups. At the third International Congress held in Oslo in 1962, delegates attended from 24 countries including the United States, Great Britain, Iran, Holland, Norway, Germany, Japan and Colombia.

Ethical Culture has been recognized as one of those "religions in this country which do not teach what would generally be considered a belief in the existence of God." *Torcaso* v. *Watkins*, 367 U. S. 488 at 495, n. 11. Ethical Culture is listed as a religion in the Census of Religious Bodies published by the Federal Government,[1] and in various religious publications[2] and general reference works.[3] Federal tax exemption rulings have been issued

1. U. S. Bureau of the Census, Dep't of Commerce, *Religious Bodies, 1936* (1941).

2. *Yearbook of American Churches* (Landis ed. 1958); *A Guide to the Religions of America* (Rosten ed. 1955); Burtt, *Types of Religious Philosophy* (1939); Ferm, ed. *Religion in the Twentieth Century* (1948); 5 *Encyclopedia of Religion and Ethics* (Hastings ed. 1928).

3. Hutchinson, *Twentieth Century Encyclopedia* (rev. ed. 1952); 21 *Dictionary of American Biography* (Starr ed. 1944); 8 *Encyclopedia Brittanica* (14th ed. 1932); 10 *Encyclopedia Americana* (1947 ed.).

to the American Ethical Union and to the various Ethical societies. The District of Columbia Society has been held to be "a religious corporation or society," the building of which "is one primarily and regularly used by its congregation for public religious worship," within the meaning of the District of Columbia Code provision exempting property of "religious societies" from certain local taxes. *Washington Ethical Society* v. *District of Columbia*, 249 F. 2d 127 (D. C. Cir. 1957).

All the Ethical Culture Societies and Fellowships conduct services and most conduct religious schools for children which meet regularly on Sunday mornings. The Leaders of the Ethical Culture Societies, some of them drawn from the ordained ministry of other religious groups, are required to have advanced degrees, post-graduate study in religion and philosophy and to take an intensive course of training before appointment and admission to the Fraternity of Leaders of the American Ethical Union. The Leaders provide the services customarily performed by ministers of religion, such as officiating at marriages, funerals and naming ceremonies, and counselling members of the Societies on ethical and moral problems.

A fundamental tenet of Ethical Culture is the freedom of each individual to determine for himself whether or not to relate his religious aspirations to the existence of a Supreme Being. The Ethical Movement has no fixed creed or dogma, and requires no particular theological beliefs of its members. It

> "holds that, although the universe which we all share, speaks to us in different accents or tongues, no one can

be sure, or prove to others, which one is true. The Ethical Movement therefore, is uncommitted on theological and metaphysical questions. Whether one does or does not believe in God, prayer or immortality, is one's own affair. Membership in an Ethical Society is not conditioned on acceptance or rejection of any one answer to such question. In the Ethical Movement the good life and the rights and duties of human beings are looked upon as stemming from man's relations to man in the family of mankind." [*Do You Know the Ethical Movement?*, pamphlet published by the American Ethical Union, 2 West 64th Street, New York 23, N. Y. p. 3]

The American Ethical Union is concerned with any Governmental elevation and approval of theism as the only true religion and the deprecation of its own religious pattern. It has an interest in the continued recognition of Ethical Culture as a religion for all purposes, including the right of its members to conscientious objector status on an equal basis with adherents of other faiths. It has a further interest in preserving the rights of individual conscience free from Governmental imposition of any rigid orthodox formula defining religion.

ARGUMENT

The First and Fifth Amendments prohibit discrimination against conscientious objectors who hold non-theistic beliefs.

Endeavoring to avoid repetition of other briefs herein, we will present in this brief considerations which demonstrate, we believe, the unconstitutionality of the Government's use of belief in a Supreme Being as the criterion of

religion; the established and important role of non-theistic religions; the lack of justification for the Supreme Being clause from the standpoint of administrative convenience; and the unreasonableness, even apart from the First Amendment's guarantee of Government neutrality between religions, of discriminating between conscientious objectors who hold theistic beliefs and those who hold non-theistic beliefs.

The issue before the Court is whether the Government can, consistently with the First Amendment, act as the arbiter of religions, determining what is accredited religious belief or what an individual must believe to be religious. Almost throughout its argument, however, the Government assumes that "religion" within the protection of the First Amendment necessarily implies belief in divine command, God, and a Supreme Being[4], thus assuming the answer to the crucial issue and avoiding confrontation with the reasoning of the Court below.

In refutation of the Government's interpretation of the First Amendment, stands this Court's *Torcaso* opinion. There it recognized that religion in the First Amendment sense includes both "religions based on a belief in the existence of God" and "religions founded on different beliefs." The Court mentioned several religions, including Ethical Culture, "which do not teach what would generally be considered a belief in the existence of God • • •" (367 U. S. at p. 495, n. 11). The Supreme Being provision and the Government's defense of it can be reconciled with *Torcaso* only if it be supposed that this Court there used the

4. *E.g.*, Govt. Brief, pp. 10, 13, 20, 22, 24, 35, 71, 75-77.

word "God" in some sense which differs from "Supreme Being." Such a differentiation, however, would permit the Government to intrude and draw metaphysical distinctions in the area of spiritual belief—exactly the result which we think *Torcaso* intended to proscribe. Indeed, the type of ratiocination in the Government brief as to the nature of a Supreme Being (Govt. Br., pp. 72-75), illustrates, we believe, the evil of the clause and the value of the *Torcaso* doctrine that concern with a theistic or non-theistic basis of religion is not the business of Government.

The recognition in *Torcaso* of religions without a theistic creed, was based on the established place of these religions historically and in the culture of today.

A. The Beliefs of the Non-Theistic Religions

Non-theism is a view which neither categorically denies, nor dogmatically affirms, the existence of a Supreme Being. Recognizing the limitations and the fallibility of the human intellect and the proper restriction of its use to matters of experience, non-theism argues that the existence or non-existence of God is not susceptible of proof and should, therefore, be left entirely within the realm of private belief. Organized non-theistic religious groups, such as the Ethical Culture Societies, include members whose personal faith includes a Supreme Being, and those whose personal faith does not.

As long ago as 1886, Felix Adler, founder of the Ethical Movement, pointed out:

> "Religion is not identical with theology. It is indeed often maintained that the belief in a personal God

> should be regarded as the foundation and criterion of religion * * *."

But, he added,

> "It is the moral element contained in it that alone gives value and dignity to any religion, * * *. The appeal to conscience has ever been the lever that raised mankind to a higher plane of religion."[5]

Three decades ago John Dewey wrote *A Common Faith,* devoted to separating "the religious phase of experience * * * from the supernatural and the things that have grown up about it." [Dewey, *A Common Faith* (1934), p. 2.] He wrote that religious qualities "are not bound up with any single item of intellectual assent, not even that of the existence of the God of theism" (*ibid.* p. 32). To him "religious" signified an attitude, "independent of the supernatural" (*ibid.* p. 66).

In his book, *Ethics as a Religion* (1951), Dr. David Saville Muzzey, a Leader in the Ethical Culture Movement, points out (pp. 86-87) that "Everybody except the avowed atheists (and they are comparatively few) believes in some kind of God", and that "The proper question to ask, therefore, is not the futile one, Do you believe in God? but rather, What *kind* of a God do you believe in?" In an attempt to answer that question Dr. Muzzey continues (p. 95):

> "Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. It is anthropocentric, not theocentric. Religion, for all the various definitions that have been given of it, must surely

5. Adler, *Creed and Deed* (1886), pp. 37, 163-164.

> mean the devotion of man to the highest ideal that he can conceive. And that ideal is a community of spirits in which the latent moral potentialities of men shall have been elicited by their reciprocal endeavors to cultivate the best in their fellow men. What ultimate reality is we do not know; but we have the faith that expresses itself in the human world as the power which inspires in man moral purpose."
>
> * * *
>
> "Thus the 'God' that we love is not the figure on the great white throne, but the perfect pattern, envisioned by faith, of humanity as it should be, purged of the evil elements which retard its progress toward 'the knowledge, love and practice of the right.'"

Lord Snell, a former President of the British Ethical Union, described the non-theistic position of the Ethical Culture Movement as follows:

> "The central purpose of the Ethical Culture Movement is to establish in the world a religion devoted to the right, apart from supernatural sanctions * * * With regard to the ultimate nature of things, a life after death and the final goal of the universe, the Ethical Movement affirms no creed. Its members may have divergent views on these problems but they unite in devotion to good action in the world in which they live."[6]

The viewpoint of the Humanist Movement has been set forth by Curtis W. Reese, Secretary, Western Unitarian Conference, as follows:

> "To Humanism 'worship' means the reverential attitude toward all that is wonderful in persons and

6. Quoted by W. Edwin Collier in *The Standard* (Jan.-Feb. 1951) p. 223.

throughout all of life; a wistful, hopeful, expectant attitude of mind, not abject homage to either 'Humanity' or 'God' * * *

"Humanism is not Atheism. Atheism is properly used as a *denial* of God * * * [T]he Humanist attitude toward the idea of God is *not that of denial* at all; it is that of *inquiry*. The Humanist is questful; but if the quest be found fruitless he will still have his basic religion intact, viz., the human effort to lead an abundant life." (Reese, ed., *Humanist Sermons* (1927), pp. vii, viii. Emphasis in original.)

A more recent statement of the non-theistic, humanistic approach to the problems of belief is set forth in an article by Professor Kai Nielson of Amherst College:[7]

"Religion is not a kind of science—not even a 'supra-science'; nor is it any other kind of a *theory*. It is instead a practical activity with some reasonably definite functions. Religious discourse is essentially a figurative, non-literal discourse * * * [R]eligious utterances are ritualistic or ceremonial utterances that express our basic commitments and concerns.

* * *

"The function of religion in a culture in crisis (or for that matter in any culture) is to serve as a figurative expression of the regulative maxims that guide men's lives and express their ultimate concerns.

* * *

"I would argue that a resolute humanism is best able to meet men's religious needs in a democratic and scientifically oriented society * * * [It] can see the creativity in all religious expressions without assuming the uniqueness or dominance of any single sym-

7. Religion and the Modern Predicament, *The Humanist* (Jan.-Feb. 1958) pp. 26, 28, 29.

bolic form * * * [and] can see and assert the religious (ideal) qualities in natural experience.

* * *

"Humanism does not, as it is often parodied as doing, worship man's ego-centered image of his own divinity, though humanism quite rightly recognizes and emphasizes man's worth and dignity * * * The object of worship for a humanist is indeed man; but here the noun 'man' is understood collectively as denoting all mankind, and not as denoting man taken distributively with his masterless egocentric worship of his individual ego's lusts to power."

These samples of Humanist and Ethical Culturist nontheistic thought could be multiplied many times by quotations from world-renowned philosophers and psychologists. Alfred North Whitehead declared that "Religion is what the individual does with his own solitariness." A. Eustace Haydon conceives of religion as "the shared quest for the good life." Erich Fromm recognizes nontheistic as well as theistic religions and defines religion as "any system of thought and action shared by a group which gives the individual a frame of orientation and an object of devotion." And the celebrated biologist, Julian Huxley, has written:

"I have called this book *Religion without Revelation* in order to express at the outset my conviction that religion of the highest and fullest character can co-exist with a complete absence of belief in revelation in any straightforward sense of the word, and of belief in that kernel of revealed religion, a personal god."[8]

8. Whitehead, *Religion in the Making* (1926), p. 16; Haydon, as quoted in Morain, *Humanism as the Next Step* (1954), p. 12; Fromm, *Psychoanalysis and Religion* (1950), p. 21; Huxley, *Religion without Revelation* (1957), p. 1.

B. The History and Development of Non-Theistic Religion

The roots of the non-theistic religious movement in Western culture go far back. Such views are found in the Middle Ages, and during the renaissance there was a resurgence of non-theistic philosophy and a renewed interest in human problems and the concept of the dignity of man.[9] Non-theistic religious views are found in Jewish thought of the sixteenth and seventeenth centuries,[10] and in the writings of Spinoza,[11] Kant,[12] Auguste Comte, and John Stuart Mill.[13] In the early days of the United States, Benjamin Franklin, Thomas Jefferson, Thomas Paine and many others expressed interest in the development of a religion based on reason rather than revelation.[14]

It was during the nineteenth century, however, that non-theistic religious movements developed significantly in American life. It was, in part, the revolt against dogmatism which led the New England Unitarians to transmute

9. Kristeller, in Ferm, ed., *A History of Philosophical Systems* (1950), pp. 227-238; Cassirer, Kristeller and Randall, *The Renaissance Philosophy of Man* (1948).

10. Rivkin, *Leon da Modena and the Kol Sakhal* (1952), pp. 6-17.

11. Wolfson, *Philo: Foundations of Religious Philosophy in Judaism, Christianity and Islam* (1947), pp. 458-459.

12. Kant, *Critique of Pure Reason* (1781); Book II, §2, Chap. III, §7; Tsanoff, *The Great Philosophers* (1953), p. 455.

13. Aiken, ed., *The Age of Ideology: The 19th Century Philosophers* (1956), pp. 122-123; Mill, *Nature and the Utility of Religion* (1958), pp. 68-69.

14. Schneider, ed., Benjamin Franklin: *The Autobiography and Selections* (1952), xiv, 57.

the traditional concept of divine Christ to the concept of a human Jesus, a great moral teacher and leader. William Ellery Channing, their most distinguished leader, said "the adoration of goodness—this is religion."[15] The transcendentalism of Emerson[16] and Thoreau[17] and the "manly theology" of Theodore Parker,[18] were primarily concerned with man and his relation to his fellow man. Their basic concern was to subordinate inconclusive debate about the existence and nature of God to an attempt to improve human society by furthering humaneness in the relations between man and man.

After the Civil War, non-theistic religious movements in the United States began to multiply. Unlike the pre-Civil War groups, which had attempted to establish Utopian communities,[19] the newer movements continued to live in the world and to attempt to change it by participating in social reforms. Out of the Unitarian group there began in 1866 the important Free Religious Association,

15. 2 Parrington, *Main Currents of American Thought* (1930), p. 332.

16. Schneider, *A History of American Philosophy* (1946), Ch. 25; Blau, *Men and Movements in American Philosophy* (1952), pp. 121-131; Blau, ed., *American Philosophic Addresses, 1700-1900* (1946), pp. 586-604.

17. Blau, *Men and Movements in American Philosophy* (1952), pp. 131-141; Cargill, ed., Henry Thoreau: *Selected Writings on Nature and Liberty* (1952); pp. 56-107.

18. Schneider, *A History of American Philosophy* (1946), Ch. 24; Dirks, *The Critical Theology of Theodore Parker* (1948); Commager, *Theodore Parker* (1936).

19. Such communities included Brook Farm and Fruitlands, and the communal village of Modern Times (now called Brentwood) on Long Island in New York State. See Hinds, *American Communities* (2d ed. 1908).

which Emerson joined in his later years. The Association was most influential in its insistence that social reform activities were an integral part of religious faith, and in its refusal to make acceptance of theism a condition of membership. Felix Adler, founder of the Ethical Movement, was a member of the Free Religious Association for ten years. He resigned its presidency in 1882 and devoted himself to the Society for Ethical Culture in New York City, which he had founded several years before, in 1876.

C. Non-Theistic Religions Today

A widely-used authoritative survey of American religious beliefs and practices points out the truly religious character of non-theistic movements, which are described as "nonecclesiastical spiritual movements." It states:[20]

> "Unfortunately this aspect of America's religious life has been the object of but little serious study. Most of these movements do not gain their chief impetus from an organization, their major tenets are almost never set down in formal creeds; and statistics on the number of adherents are either meager or nonexistent * * * Yet such knowledge as we have forces us to the conclusion that these nonecclesiastical movements furnish the vital spiritual orientation of multitudes of the American people * * * and must be taken into account in any realistic appraisal of the religious situation in the United States."

Neither Buddhism nor Confucianism professes belief in a Supreme Being;[21] yet both are unquestionably re-

20. Williams, *What Americans Believe and How They Worship* (1952), pp. 351-352.

21. Potter, *The Story of Religion* (1939), xvii-xviii; Archer, *Faiths Men Live By* (1934), p. 270; Hutchinson and Martin, *Ways of Faith* (1953), p. 134.

garded and treated as religions. To quote the opinion of a court in California:

> "* * * there are forms of belief generally and commonly accepted as religions and whose adherents, numbering in the millions, practice what is commonly accepted as religious worship, which do not include or require as essential the belief in a deity. Taoism, classic Buddhism, and Confucianism, are among these religions." *Fellowship of Humanity* v. *County of Alameda, et al.,* 153 Cal. App. 2d 673, 315 P. 2d 394 (1957).

Thus, as was recognized in *Torcaso,* to exclude non-theistic belief from the constitutional concept of "religion" would be to exclude, among others, some of the major faiths of the world which are traditionally recognized as "religions."[22]

D. First Amendment Protection of Non-Theistic Religion

This Court's recognition in *Torcaso* that religion in a constitutional sense embraces non-theistic beliefs had been foreshadowed in earlier cases. See *McGowan* v. *Maryland,* 366 U. S. 420, 466 (opinion of Frankfurter, J.): the Establishment Clause relates to

> "a specific, but comprehensive, area of human conduct: man's belief in the verity of some transcendental idea

22. The Government confuses the issue when it speaks of a continuum of beliefs ranging into the political judgments made by Congress and the President under the war-making power (Govt. Br. p. 35). Questions of religious and conscientious belief, which is the only type of belief here involved, are outside the political province.

and man's expression in action of that belief or disbelief."[23]

Historically, the draftsmen of the First Amendment must have envisioned its protection of non-theistic belief, considering the prominence and standing of the Quaker sect among the religions of the time.[24] Like Ethical Culture, the Quaker faith does not dictate a belief in a Supreme Being.[25]

With recognition that the First Amendment's religion clauses protect non-theism as well as theism, it follows that the Supreme Being provision contravenes the First Amendment, and also the Fifth Amendment's due process clause, for it differentiates between conscientious objectors on a basis that is not permissible under the First Amendment. Under this provision, the Government approves, encourages and favors one religion while burdening another: an Ethical Culture member, for example, with a

23. See also *Thomas* v. *Collins*, 323 U. S. 516. And in *Washington Ethical Society* v. *District of Columbia*, and *Fellowship of Humanity* v. *County of Alameda*, cited *supra*, pp. 3 and 14, Ethical Culture and humanist groups respectively were held, despite their non-theistic creeds, to be "religious" within the meaning of tax exemption statutes, in part because the courts thought discrimination against them might be unconstitutional.

24. See *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 653, as to presence of Quakers in the United States in its formative period. See *United States* v. *Macintosh*, 283 U. S. 605, 622 to 633, dissenting opinion of Hughes, C.J., citing early New York constitution exempting Quaker conscientious objectors from military service.

25. See William Wister Comfort (President of Friends Historical Society, past President of Haverford College), *Quakers in the Modern World* (published by MacMillan, 1952), c. 5; The Foundation Tenets of Quakerism; Comfort, *The Quaker Way of Life* (1945), p. 8, quoting George Fox, a founder of Quakerism in 1624, as to "That of God in every man".

non-theistic conscientious objection to war must either compromise and forego his belief or undergo a criminal penalty. Compare *Sherbert* v. *Verner*, 374 U. S. 398, 404. If "the effect of a law * * * is to discriminate invidiously between religions, that law is constitutionally invalid * * *" *Braunfeld* v. *Brown*, 366 U. S. 599, 607.

It may be suggested that Government neutrality between religions is less than an absolute principle. For, the Government can prohibit a religious exercise which constitutes a danger to the public welfare;[26] in a sense, it thereby disfavors that religion while relatively aiding the others. However, the non-neutrality there is far different from the partiality in the provision at bar, for here the Government discriminates between individuals exercising the *same* religious belief—objection to combat—depending on their religious premises.

No justification can be posited for such a drastic negation of the principle of neutrality. Indeed, as we shall show, the statutory discrimination against non-theists so lacks justification, that even apart from the First Amendment guarantees, it violates the equal protection aspect of due process.

E. Lack of Reasonable Basis for Discrimination

1. The justification suggested for the Supreme Being clause—that it serves administrative convenience in determining exemptions—seems illogical.

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26. *E.g.*, *Reynolds* v. *United States*, 98 U. S. 145: prosecution of a Mormon for polygamy held constitutional.

The purpose of the addition of this clause to the statute was to incorporate the concept of religion enunciated in a Ninth Circuit opinion.[27] Neither the opinion nor the statutory draftsmen indicated any intention of simplifying administration.

Determination of the registrant's belief in a Supreme Being is of no assistance in making the fundamental finding as to whether he conscientiously objects to war. Obviously, the administrators cannot draw the sometimes difficult distinction between a registrant's political belief against a particular war and his conscientious belief against all war, on the basis of belief in a Supreme Being.[28] Nor can belief in a Supreme Being help them to determine the sincerity of a registrant's assertion of such a conscientious belief. Most selective service registrants probably hold theistic beliefs and most, of course, are not conscientious objectors.[29] Thus, the Supreme Being clause adds to the administrators' burden by imposing on them responsibility for determination of another belief—including its sincerity—in addition to conscientious objection to war.

27. In *Berman v. United States*, 156 F. 2d 377 (9th Cir. 1946) *rendered by a divided court, cert. denied* 329 U. S. 795. See Sen. Rept. 1268, 80th Congress, 2d Sess. (1948), p. 14, as to the draftsmen's reliance on *Berman*.

28. Rather, the distinction is tested by consideration of the registrant's condonation of combat under non-political circumstances, such as invasion and devastation of his home, or extreme barbarism; thus, some who considered themselves pacifists found themselves warlike when confronted by Hitler's barbarism.

29. According to information supplied by the Selective Service Board by letter dated September 23, 1964, registrants classified as conscientious objectors from June 24, 1948 to June of 1964 totalled 26,053 out of a total, during this period, of 28,036,177 registrants.

The Second Circuit Court of Appeals suggested that a prior amendment of the conscientious objector statute to eliminate the requirement of membership in a particular sect had simplified the administrators' job (*Phillips* v. *Downer*, 135 F. 2d 521, 524 (2d Cir. 1943)).[30]

The burden of an additional finding—imposed on the administrators by the Supreme Being clause—is increased by the difficulty of interpreting the words "Supreme Being". It is not clear whether this phrase connotes a God in anthropomorphic form, a spirit of some super-human character, or a transcendent idea; whether it would include "the qualities of Godness that exist in every creation in Mankind", or "the self-transcendent ground of being" (*United States* v. *Jakobson*, 325 F. 2d 409, 412, 415, note 5 (2d Cir. 1963)), "a belief in the mystery of * * * the essence being alive, * * * respecting and loving this livingness" (*Peter* v. *United States*, 324 F. 2d 173, 177 (9th Cir. 1963)), or the "perfect pattern, envisioned by faith, of humanity, as it should be * * *".[31]

No longer is it possible to insist that there is a strict correspondence between religious belief and affiliation to a particular religious organization. Whatever may have been the case in the past, twentieth-century churches do not and cannot demand adherence to specific beliefs from their members, nor do modern theologians stress the organization of religion. The challenging German Protestant thinker, Dietrich Bonhoeffer, speaks of "religionless

30. During World War I exemption was granted even to non-religious conscientious objectors, as an evolution and, apparently, a simplification of administrative practice (see Govt. Br. pp. 58-59).

31. Muzzey, *Ethics as Religion* (1951), p. 95.

Christianity." Reinhold Niebuhr sees a spiritual danger in overemphasis on the role and value of the church: "When an institution which mediates the judgment of God upon all the ambiguities of historic existence claims that it has escaped those ambiguities by this mission, it commits the same sin which the prophets recognized so clearly as the sin of Isreal."[32] Martin Buber, among Jewish theologians, has shown little concern for the institutional embodiment of religious ideas.[33]

The chief contribution of the prevalent mode of theological thinking today lies in the denigration of collective worship in contrast with the confrontation of each individual with ultimate spiritual reality. The standard nineteenth-century mode of associating belief and organizational affiliation is no longer valid. It has been superseded by changes in the modern conception of the nature of religion.

Within the traditionally theistic religions, ideas of God have become so differentiated that they do not yield readily to testing by the Supreme Being clause. In Protestant Christianity, to go no farther afield, Dr. Henry Nelson Wieman rejects the theological portrait of "God as a reality beyond space and time" and insists that "God must be found in actual events,"[34] thus denying the transcendence of God. Karl Barth, while urging concern for "God with us," yet argues with fervor that this "evangelical"

32. Reinhold Niebuhr, *The Nature and Destiny of Man* (1943), vol. II, p. 145.

33. See Blau, *The Story of Jewish Philosophy* (1962), pp. 295-305.

34. Wieman, *The Directive in History* (1949), p. 20.

God *is* transcendent.[35] William A. Spurrier differs from both and associates the idea of God with "the ultimate power and reality in life."[36] None of these views, although they are statements of men recognized as outstanding leaders of contemporary Protestant theology, is clearly and self-evidently assimilable to the Supreme Being clause. Indeed, the Supreme Being clause is open to such difference in interpretation, that it may offend the due process clause on the score of vagueness and susceptibility to unequal, arbitrary, administrative variation in application.

Finally, it has been suggested that the Supreme Being clause serves administrative convenience by decreasing the number of registrants entitled to exemption. This suggested justification is intolerable under constitutional principles. The crux of the guarantee of equal protection is the requirement of reasonable distinctions: the individual's right to inclusion in a favored group unless he can reasonably be distinguished from it.

3. The Constitutional principle of neutrality between the theist and non-theist (discussed *supra*) is paralleled by the demand from a philosophical, psychological and logical standpoint that the non-theist's conscientious belief be deemed of equal dignity and importance with the theist's.

With the elimination of the statutory requirement of membership in a pacifist religious sect, conscientious objection is necessarily a matter of individual development and personal interpretation, whether the registrant is a theist or a non-theist. A theist may or may not attribute this individually-developed conscientious conviction to di-

35. Barth, *Evangelical Theology* (1963), pp. 6, 12.

36. Spurrier, *Guide to the Christian Faith* (1952), p. 113.

vine command. Thus, even Catholic writers—unquestionably theists—have pointed out that the dictates of conscience are not necessarily connected with one's belief in God.[37]

Historically, as well as currently, philosophers of eminence regard conscience as a sense of right or wrong unrelated to a Diety. British ethical philosophy of the eighteenth century, lying in the direct background of the founders of the American nation and authors of its Constitution, tended to proclaim an intuitionist theory of conscience under which each man has an innate sense of what is right and what is wrong, just as he has an innate sense of color. Opposed to this school, some eighteenth-century European philosophers viewed reason as the sole source of conscience. The American "Founding Fathers" drew from both views: they regarded conscience as innate, but supplemented or supported by human reason.

Thus, aside from some particular schools of theology expounding particular theist creeds, reasoning as to the nature of conscience indicates no basis for discriminating between the conscientious convictions of theists and nontheists. So too is the conclusion from psychological learning. From the psychologists' standpoint, even if in a theist view conscience is the expression of divine command, the command must be "internalized" before it can motivate.[38] Viewed psychologically, a conscientious conviction is a conscientious conviction, however its source may be conceived by the theologians or philosophers.

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37. Von Hildebrand, *Christian Ethics* (1953), pp. 455-456.

38. Fromm, *Man for Himself: An Inquiry into the Psychology of Ethics* (1947), 143-145; compare Freud, *Civilization and its Discontents* (1930), 104-122.

Finally, only the metaphysicians will quibble as to whether a theist, who attributes his conscientious objection to divine command, feels more compelled thereby and endures greater emotional suffering from his disobedience than the non-theist. Thus, George Eliot (Marian Evans) is quoted in a conversation "concerning God, immortality, and duty, in which she 'pronounced with terrible earnestness how inconceivable was the first, how unbelievable was the second, how peremptory and absolute was the third.'"[39]

In sum, analysis from the standpoint of the various pertinent fields of knowledge, indicate no reasonable basis for discriminating between conscientious objectors who believe in a Supreme Being and those who do not.

39. Wheelwright, *A Critical Introduction to Ethics* (1949), 125.

Conclusion

Amicus **submits that the Supreme Being clause of the Selective Service Act of 1948 is an unconstitutional discrimination against conscientious objectors of non-theistic beliefs and an unconstitutional preference of theistic religion over non-theistic religion, in violation of the First Amendment; that the Supreme Being clause creates an arbitrary, unreasonable and impermissible classification between conscientious objectors of theistic belief and those who follow non-theistic religions in violation of the ~~Fourteenth~~ FIFTH Amendment, and that the decision of the Court of Appeals should therefore be affirmed.**

October, 1964

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Summary of argument	15
Argument:	
The Selective Service authorities were warranted in finding that petitioner's opposition to war is not based on an obligation superior to that arising from any human relationship	16
Conclusion	22

CITATIONS

Cases:

Cox v. *United States*, 332 U.S. 442 — 18

Dickinson v. *United States*, 346 U.S. 389 — 18

Eagles v. *Samuels*, 329 U.S. 304 — 18

Estep v. *United States*, 327 U.S. 114 — 18

Gonzales v. *United States*, 364 U.S. 59 — 18

United States v. *Jakobson*, No. 51, this Term — 15, 16, 18

United States v. *Seeger*, No. 50, this Term — 2, 15, 16

Statute:

Section 6(j), Universal Military Training and Service Act, 50 U.S.C. App. 456(j) — 2, 15, 16, 17

748-110—64——1

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 29

FOREST BRITT PETER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 88–96) is reported at 324 F. 2d 173.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 1963 (R. 96). A petition for rehearing was denied on December 10, 1963 (R. 97). Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including January 24, 1963 (R. 98), and the petition was filed on that day. The petition was granted on May 4, 1964 (R.

99). 377 U.S. 922. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner was exempt from the draft as a conscientious objector on the ground that his opposition to war in any form resulted from his "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" within the meaning of Section 6(j) of the Universal Military Training and Service Act.

2. Whether Section 6(j) is constitutional if it does not permit petitioner to qualify as a conscientious objector.[1]

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), provides:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

[1] This second issue is discussed in the government's brief in the companion case of *United States* v. *Seeger*, No. 50, this Term.

STATEMENT

Petitioner was convicted in the United States District Court for the Northern District of California, sitting without a jury, of failure to submit to induction into the armed forces and was sentenced to six months' imprisonment.

Petitioner initially registered with his local board on July 10, 1956 (R. 13). On May 29, 1957, while a student at Reed College, he filed the standard classification questionnaire (R. 14–20). With the questionnaire he submitted a poem expressing objection to war and a statement indicating that he was of the same view (R. 23).[2] At this stage, he made no claim for an exemption as a conscientious objector (R. 16). Petitioner first requested classification as a conscientious objector and asked for an SSS Form 150 on March 4, 1958 (R. 24). He did not sign the form's printed statement that his objection to war was "by reason of my religious training and belief"; and, in answer to the question relating to his belief in a "Supreme Being," he stated that "[i]t depends on the definition" (R. 25). He appended the following explanation (R. 27):

> Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson,

[2] When, four years later, he received his notice to report for his physical examination and informed the local board that he would not comply, he submitted the same poem to the board and again indicated his concurrence (R. 62).

Whitman, and more modern poets who have touched on the question.

I consider this belief to be superior to my obligation to the state.

In so far as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demand . . . (it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

* * * [T]he source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic american culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups.

The use of violence (physical force) comprises the ends one seeks in action. I consider war to be the greatest example of this. The use of non-violence in the freeing of India and the Montgomery bus strike is an example of the kind of force I do believe in.

In response to the question calling for "actions and behavior" demonstrating the "consistency and depth" of his religious convictions, he stated that "[n]one enters my mind at the moment" (R. 26); he further stated that he was not a member of a religious sect or organization (R. 28).

The local board rejected petitioner's application for classification as a conscientious objector and classified him 1-A (R. 21). It nonetheless granted his request for a hearing in order to enable him to make a personal presentation of his beliefs (R. 31). In connection with the hearing, petitioner wrote to the board stating that "[a]s I understand the word religious, I think my stand has a religious basis" (R. 32). He also submitted a written addition to his prior answers to SSS Form 150 (R. 33):

> All real living is meeting—MARTIN BUBER.
>
> I have this God inside of me. To be truthful, I don't know if it's a long or short God or even a Superior God (much less a Supreme Being) and I have no idea what its sex is. I'm even worried about calling it God. After all a great deal of death has been done in the name of God.
>
> This God, this God I have inside of me goes off every once in a while and opens me to the motions, to beauty and sadness in the universe. That is, now and again I feel the compulsion to meet the world around me. I'm filled with wonder, I'm possessed as it were, I feel so good I think I'm crazy. So my God isn't beyond me, it's within me and opens me to Godliness in the world.
>
> I see an army over this world of wonder. Such stupidity and wasted energy. It's liable to kill us all.

Following the hearing, the board affirmed petitioner's classification (R. 21). Petitioner wrote to the board that its decision "was not a surprise con-

sidering my lack of 'proof' and your lack of moral courage," and added that "I just hope the war that you support won't kill us all in the next few years" (R. 34). His file was then forwarded to the selective service appeal board, which "tentatively determined that the registrant should not be classified in Class I–O or in a lower class" (R. 21).

The matter was then referred to the Department of Justice. After the required F.B.I. inquiry, petitioner received a hearing which he attended with his advisor and two additional witnesses. Among the persons whom the F.B.I. interviewed was one of petitioner's former high school teachers, who said that petitioner had "come to the unshakable opinion that the leaders of the world, including the United States, are pursuing a pa[th] of folly and that something will be done which will exterminate the human race," and that petitioner felt that "he could not conscientiously participate in military service as an implement of present day policy" (R. 39). The teacher further stated that, on the basis of recent conversations with petitioner, he believed that petitioner "had become more adamant in his position but that his reasons have become confused and [he] finds it difficult to put his position in words" (R. 39). Another person interviewed, a close friend, stated that petitioner was most influenced by the poet William Blake, the novelist D. H. Lawrence, and the Jewish theologian Martin Buber; that he had spent much recent time in readings on Oriental religion; and that he had become familiar with writers like Alan Watts, a radio broadcaster and

former Anglican minister. The friend said that petitioner "has no church affiliation but is neither atheistic nor agnostic and the trend of his thinking is toward mystical writings" (R. 43). By "mystical," the friend said, he meant that "life is a mystery and cannot be explained"; he added that the writers who have influenced petitioner are mystical and that petitioner's discussions reveal that he "believes that the whole scheme of things which would make killing a justifiable and meaningful act is wrong" (R. 44). Similarly, petitioner's witnesses at the Department of Justice hearing offered the opinion that his beliefs "most nearly resembled Buddhism," and his "advisor," upon being read the pertinent portions of Section 6(j) pertaining to belief in a Supreme Being, stated that he thought petitioner's "position to be sufficient or was becoming sufficient in that respect" (R. 37).

Prior to the hearing, petitioner submitted further additions to his SSS Form 150. In answer to the question concerning actions which demonstrate the consistency and depth of his religious convictions, he stated that that was for others and not himself to say, and that he knew "only that at times I fel[t] as if I were 'playing in the world' that part of this realization is a knowledge of the wastefulness of physical violence (the state's continual mobilization for war)" (R. 52). In answer to the question concerning prior public expression of his views, he noted that he had participated in several poster marches calling for the abolition of the use of nuclear weapons (R. 53), that he had "put together an Anthology of Peace Poetry

for Acts for Peace," and that he was a contributing editor for a publication called *Utopian Papers* (R. 54). He also mentioned "long walks in the night," taken with a friend, during which "both agreed time and again that the military institution and war were colossal follies" and that "no cause could justify the slaughter and tremendous expenditure [i]nvolved in maintaining or using an army" (R. 53). He added that "[w]e also spoke; said nothing, wondered at the beauties of the night" (R. 53).

The hearing officer concluded that petitioner "evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act." He recommended that petitioner's claim not be sustained (R. 37). The Department of Justice concurred (R. 38). Petitioner was informed of his right to file a written reply to the Department recommendation (R. 54). In response, he submitted, in addition to a specific reply, a "further statement of the religious motivation" of his objection, a statement on the anniversary of the bombing of Hiroshima, and a letter from a friend, signed "John Doe," which he stated "throws light on the psychology of my own objection" and which "I am in more than partial agreement with" (R. 55). In regard to Hiroshima, petitioner stated, "My mind does not dwell on the mutilation of that cit[y's] people. I do though, damn the logic of a State that could find justice in such an act [of] d[e]struction" (R. 57). The letter from "John Doe" set forth that the writer believes in America as "a meeting of all races" and "a thing that

happened when men began to outgrow those subdivisions and saw his responsibility was to mankind," and that, because he believes "in the ultimate rightness of America" and "the ultimate rightness of man," he recoils "from the idea of involving myself with any military procedure these days when man has come so near to arranging his suicide" (R. 56).[3]

In further explaining the purported "religious" motivation of his objection, petitioner said (R. 60–61):

> I have never directly answered 'yes' or 'no' to your question "Do you believe in a Supreme Being" because I do not know what you mean by the phrase. Any theologian would also wonder as to your meaning. And perhaps also wonder at the wisdom of legally defining the essence and existence of a God.
>
> I have tr[i]ed however to give a picture of my own 'religiousness' and show how it motivates my objection.

---

[3] The letter ended (R. 57):

> My very constitution would rebel from killing a man in such circumstances. I could not help but realize my enemy is not this man but those who forced me there.
>
> Your cause is yours
> cause for anger?
> cause for reflection?
> cause for genuflection?
> cause for poetry?
> cause you would oppose?
> I am as godless as the gods.
> My cause is theirs.
> I am not conscientious, that is for Britt Peter to be;
> I am conscious.

I can't honestly say a Supreme Being directs creation, I DON'T KNOW. However, I'm moved by many of the elements in the world—in creation.

You might say I l ve in them. I believe in these elements because they are there. I think this process—call it belief if you like—is different than simply knowing as if love or a knowledge of God were just facts. Looking into the world I find solace or pain but no answers; A voice that says made in heaven by the Supreme Being as defined by the United States Government is not there, but space is; Room for limitless understanding and concern.

Or:

We say, that a tree is beautiful. But why? Because the tree moves us. The branches, the leaves, the very form of the tree, the forces it exemplifies. I do not choose to name this tree God as if that would explain its reason or essence. This is a very distinctive tree and deserves a new name and a reverence that is open to the endless number of things the tree tells us—of form, life and death, of ourselves; our own existence.

I don't think this is lack of belief. I'm upheld by creation, finding ease as well as pain there.

THERE'S NO FALLING OUT
OF THIS WORLD
OF LONG GRASS
AND BASS NOTES
THINSKIN, DON'T HOLD
ON SO.

I believe in elements of this creation like star or animal motion. And I'd work toward

> an understanding with them called living relationship or form of love."
>
> This is the conscious effort of my life and I have already suffered some regarding it. The energy involved is considerable but I do not think it wasted, like that given to an Army or a selfish love. Nor do I know how wise I am in my devotion.

The appeal board voted 5 to 0 to continue petitioner's 1–A classification (R. 21). Thereafter, on July 20, 1961, petitioner was ordered to report for a pre-induction physical examination (R. 63). He did not report, informing the local board by mail that he would not do so in accordance with his "previously stated views and beliefs as a conscientious objector" (R. 62).

As the result of his failure to appear for the examination, petitioner was sent a Delinquency Notice (R. 64). He replied by writing the board that "I could not and will not participate in a physical examination whose purpose is to define my fitness for service in the *Armed* forces" (R. 66).

On October 13, 1961, petitioner was ordered to report for induction as a delinquent (R. 65). On the advice of counsel he reported to the induction center at the appointed time, but refused to be processed for induction (R. 67–69). Subsequently, petitioner's file was sent to the United States Attorney in San Francisco for prosecution (R. 75).

Petitioner's final expression of his views, prior to his trial, was contained in a letter which he wrote to the Director of Selective Service seeking a Presiden-

tial appeal (R. 82–87). He began by stating that he had not answered "yes" or "no" to the question of a belief in a Supreme Being because "I was not sure of the Government's definition of a Supreme Being," and such a definition, it seemed to him, "would trap the government into the tangle of proving God's existence and God's specific character" which is "[s]omething government officials have neither the right or inclination to do" (R. 82). He further stated that he could not answer with a simple "yes" or "no" how a relationship to a Supreme Being affects his actions in opposition to war, since "[t]he nature of my belief is more complex" and he places "the stress of my belief on the products, the elements in creation, rather than on a reverence toward the possible Creator of these elements and mysteries of the universe" (R. 83). He contended, in short, that he is "motivated by what Albert Schweitzer calls a 'reverence for Life,'" and feels "that each individual has the potential of realizing every moment of his life until death and that I as another human being cannot deny him the destiny his life might follow, no matter how wrong-headed it might seem" (R. 83). He added that "[t]he presence of other living being in the universe sounds a call, presents a vision, a fact, a mysterious reality that I cannot deny and to which I feel the impulse to relate," and that he views "physical violence on the other hand as a denial of life" (R. 84). Hence his pacifist conviction "is not based on intellectual conclusions alone [b]ut is primarily based on the promptings of my heart and the sense of relationship with all living elements in nature" (R. 84).

Petitioner contended that his "religious convictions" are based upon "the example and inspiration of Guatama whose four-fold truth is still a valid prescription for human happiness and if followed would bring an end to the threat of actuality of war"; upon "the Tao Te Cheng of Lao Tzu which so beautifully expresses a reverence and relationship to all the manifestations of the natural world"; upon "the example of non-violent action in some of the parables of Jesus and in the life of St. Francis"; upon "the inspiration of the Bal Shem Tov founder of the Hassidic movement in Eastern Europe, who said the expression of love toward God and his images on earth, were open to all, even the most ignorant, that they might express that love in the manner by which they were moved [e]ven if they knew not a single letter or word of Torah"; and upon "the work of Ghandi who brought religious conviction into non-violent political activity" (R. 85–86). He concluded (R. 86):

> There is the love of life and reverence toward living things expressed by many poets throughout the ages. They seem to be brothers at the urn of some common goddess though she has never been finally named or particularized.

At the trial petitioner explained the basis for his claim to be a conscientious objector as follows (R. 10–11):

> I think that my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings, and other living objects in the world, and in seeing

> these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of them, the essence being alive, and my respecting and loving this livingness in other objects and human beings.
>
> * * * * *
>
> I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.

He said he had acquired these beliefs "through my reading, association with other people, and living in the world," and that his reading had included Eastern philosophies, Confucius, Buddhist teachings, Christian mystics, Ralph Waldo Emerson, Whitman, Thoreau, and others (R. 9–10). On cross-examination, when petitioner was asked whether he deemed his beliefs religious "in that they relate to your convictions regarding reality," he answered, "Yes" (R. 11). He defined religion as (R. 11):

> based on two things. Number one would be vision, a vision of reality in the world or the universe, and second is conviction regarding that vision, the way a person reacts to his vision of reality.

On appeal from his conviction, petitioner contended only that he was within the statutory definition of a conscientious objector (R. 94). The court of appeals found that there was ample basis for the determination of the selective service board that petitioner's beliefs did not meet the statutory standards fixed by Section 6(j) for conscientious objectors in that peti-

tioner did not show that his opposition to war was based on belief in a Supreme Being (R. 95–96).

SUMMARY OF ARGUMENT

Section 6(j) grants an exemption to all conscientious objectors whose objections to military service have a religious basis. It carefully excludes those whose objections lack such basis. As we have shown in our brief in the companion case of *United States* v. *Jakobson*, No. 51, this Term, the history of this provision and of predecessor statutes shows that the requirement of religious training and belief was written into the law for the specific purpose of distinguishing between views derived from one's sense of obligation to one's fellow man and views based upon belief in relation to a Supreme Being (however conceived or defined) imposing duties superior to all human relationships.

In the companion case of *United States* v. *Seeger*, No. 50, we have dealt with the constitutional question whether Congress may grant an exemption to persons whose objections to military service are based upon a conflicting religious obligation without extending a similar grant to those who object on political, sociological, or philosophical grounds. We there argue that this is a reasonable and permissible accommodation between the needs of national defense and the freedom of religion guaranteed by the First Amendment. Assuming that in *Seeger* the Court rejects the constitutional challenge to the statute, the issue in the instant case narrows to the question whether

the selective service authorities had some basis in fact for concluding that respondent's objections were grounded essentially upon a personal moral code rather than upon a religious obligation. Taking into account the prerogatives of the Selective Service authorities in assaying the facts and the very limited scope of judicial review in this area, we believe that the administrative determination should not be disturbed.

ARGUMENT

THE SELECTIVE SERVICE AUTHORITIES WERE WARRANTED IN FINDING THAT PETITIONER'S OPPOSITION TO WAR IS NOT BASED ON AN OBLIGATION SUPERIOR TO THAT ARISING FROM ANY HUMAN RELATIONSHIP

Although petitioner contended below only that he is entitled to an exemption under the terms of Section 6(j) of the Universal Military Training and Service Act, 50 U.S.C. App. 456(j), *supra*, p. 2, he raises here, for the first time, the contention that the Section, if it is not interpreted to extend an exemption to him, is unconstitutional. We have dealt with the constitutional issue in the companion case of *United States* v. *Seeger*, No. 50, this Term. Assuming that in *Seeger* the Court rejects the constitutional challenge to the statute, the issue in this case, as in *United States* v. *Jakobson*, No. 51, this Term, is whether petitioner satisfies the standards for exemption established by Section 6(j).

In our brief in *Jakobson*, pp. 18–23, we show, on the basis of its history, that Section 6(j) was intended to permit exemption to all persons who oppose war in any form because of religious convictions. We also

argue in that brief that religious conviction means an obligation to a Supreme Being (however conceived or defined) which imposes duties superior to all human relationships. We also submit that reverence for the power and beauty of nature does not constitute an affirmation of belief in a Supreme Being. In short, Section 6(j) required that the opposition to war be based on something more than man's relationship to the human and physical world. Respondent appears to agree that the statute allows exemption for all religious objectors in the sense that they believe in a force above man or the physical world. Therefore, the sole issue here (other than the constitutionality of Section 6(j)) is whether there is basis in fact for the administrative determination that respondent's objections to war were grounded upon a personal moral code rather than a religious obligation.

Petitioner's beliefs show some similarity to those of Jakobson. Neither fits into an orthodox theological system; to the contrary, both are the result of personal conception and development. Both men base their refusal to accept induction into the armed forces upon what they term their "religious" concepts, but neither contends that such refusal is a response to what he deems to be a divine command. Both rely on both religious and non-religious writers. On the other hand, whereas Jakobson sometimes indicated belief in a "Supreme Reality," petitioner, if he places anything at all above man, seems to see this "something" as merely the forces of nature. Therefore, while petitioner's views are not free from ambiguity, we believe

that the findings of the Selective Service system, as well as of the courts below, have a basis in fact.

As we have shown in our brief in *Jakobson,* pp. 24–25, this Court has made clear that the scope of judicial review of the classification of a registrant made by the Selective Service authorities is very narrow. The question is not even whether the determination is sustained by substantial evidence, but, rather, whether there is *any* basis in fact upon which it can be sustained. *Estep* v. *United States,* 327 U.S. 114, 122–123; *Cox* v. *United States,* 332 U.S. 442, 448–449 455; *Dickinson* v. *United States,* 346 U.S. 389, 394; *Gonzales* v. *United States,* 364 U.S. 59, 65; see also *Eagles* v. *Samuels,* 329 U.S. 304, 311.

As in *Jakobson,* the beliefs of petitioner are complicated and not entirely clear. However, while petitioner stated that he has a "God inside of me" which "opens me to Godliness in the world" (R. 33), it seems that this "God" constitutes merely human life or the forces of nature. He stated that he does not know whether the God inside of him is "a Superior God (much less a Supreme Being)" and that he is "even worried about calling it God" (R. 33). He explained his unwillingness to answer whether he believes in a Supreme Being by stating that "I do not know what you mean by the phrase" (R. 60; see also R. 25, 82). He said that he could find "solace or pain" in the world "but no answers" (R. 60). He further stated that "I don't know" whether "a Supreme Being directs creation" but that "I'm moved by many of the elements in the world—in

creation" (R. 60). Petitioner said that he believes in these elements, such as space or a "star or animal motion," "because they are there" (R. 60, 61). He explained that a thing like a tree exemplifies "forces" and deserves "a reverence that is open to the endless number of things the tree tells us—of form, life and death, of ourselves; our own existence" (R. 60–61). He said that his views are best described in Rev. John Haynes Holmes' statement that "[r]eligion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands" (R. 27). He asserted that "[t]he presence of other living being in the universe" is "a mysterious reality that I cannot deny and to which I feel the impulse to relate" (R. 84). While a friend said that petitioner "is neither atheistic nor agnostic and the trend of his thinking is toward mystical writings," he defined "mystical" as "life is a mystery and cannot be explained" (R. 43, 44).

Moreover, petitioner made quite clear that, even if it were sufficient (for purposes of the statute) to believe in a Supreme Being in the sense of nature, his opposition to war is not based on any obligation transcending that of man to man. He stated that "[s]ince human life is for me a final value, I consider it a violation of moral law to take human life," and described this moral law as "the sacredness of human life and the human spirit" (R. 27). He could not answer how a relationship to a Supreme Being affects his actions in opposition to war since he placed "the stress of my belief on the products, the elements in creation, rather than on a reverence toward the pos-

sible Creator of these elements and mysteries of the universe" (R. 83). It appears, then, that the real basis of his opposition to war is the essential political, sociological, or philosophical belief that war is wrong and will cause the destruction of the human race. For example, he said that armies involve "[s]uch stupidity and wasted energy" and are "liable to kill us all" (R. 33); that the United States is "pursuing a pa[th] of folly and that something will be done which will exterminate the human race" (R. 39); that he could not serve in the armed forces "as an implement of present day policy" (R. 39); that "the military institution and war were colossal follies" and "no cause could justify the slaughter and tremendous expenditure [i]nvolved in maintaining or using an army" (R. 53). Petitioner said that he was "in more than partial agreement" with a letter (which he submitted) stating that the writer recoiled "from the idea of involving myself with any military procedure these days when man has come so near to arranging his suicide" (R. 55, 56). "[T]he conscious effort of my life," according to petitioner, is "to work toward an understanding with [the elements of creation] called living relationship or form of love" (R. 61). He stated that he is motivated by a "reverence for life," that "physical violence on the other hand [is] a denial of life," and that his opposition to war "is primarily based on the promptings of my heart and the sense of relationship with all living elements in nature" (R. 83, 84).

Finally, at his trial, petitioner summarized his views (R. 10–11):

> I think that my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of them, the essence being alive, and my respecting and loving this livingness in other objects and human beings.
>
> * * * * *
>
> I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.

In short, there is evidence that petitioner does not believe in a Supreme Being superior to the ordinary physical world, and that, even if he does, his opposition is not based on this belief.

The local board classified petitioner 1–A (R. 21). The hearing officer concluded that he "evidenced neither religious training nor belief in a Supreme Being as defined in the Military Training and Service Act" (R. 37), a conclusion in which the Department of Justice and appeal board concurred (R. 38). We submit that the statements of petitioner, described above, constitute basis in fact for this determination. We therefore believe that, under the standards of review handed down by this Court, the determinations of the local and appeal boards should be sustained.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 50

UNITED STATES OF AMERICA, *Petitioner,*

—v.—

DANIEL ANDREW SEEGER.

No. 51

UNITED STATES OF AMERICA, *Petitioner,*

—v.—

ARNO SASCHA JAKOBSON.

No. 29

FOREST BRITT PETER, *Petitioner,*

—v.—

UNITED STATES OF AMERICA.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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INDEX

	PAGE
Interest of *Amicus*	1
Statement of the Cases	2
ARGUMENT	
POINT I	
Section 6(j) is in violation of the Establishment Clause of the First Amendment	6
POINT II	
Section 6(j) is in violation of the Free Exercise Clause of the First Amendment	9
CONCLUSION	11

TABLE OF CASES

Davis v. Beason, 133 U. S. 333 (1890)	8
Engel v. Vitale, 370 U. S. 421 (1962)	7, 8
Everson v. Board of Education, 330 U. S. 1 (1947)	7
Girouard v. United States, 328 U. S. 61 (1946)	10
McGowan v. Maryland, 366 U. S. 420 (1960)	8
Reynolds v. United States, 98 U. S. 145 (1879)	8
Schneiderman v. United States, 320 U. S. 118 (1943)	10
School Dist. v. Schempp, 374 U. S. 203 (1963)	7, 8
Sherbert v. Verner, 374 U. S. 398 (1963)	9, 10
Speiser v. Randall, 357 U. S. 513 (1958)	10

PAGE

Torcaso v. Watkins, 367 U. S. 488 (1961) 7, 9, 10

United States v. Ballard, 322 U. S. 78 (1944) 11

West Virginia State Board of Education v. Barnette, 319 U. S. 624 (1943) 10

CONSTITUTIONAL AND STATUTORY PROVISIONS:

Constitution of the United States
First Amendment 2, 6, 9, 11

Section 6(j) of the Universal Military Training and Service Act, 50 U. S. C. App. §456(j) 2, 6, 7, 8, 9, 12

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UNITED STATES OF AMERICA.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The American Civil Liberties Union submits this brief, with the consent of the parties, in support of affirmance in Nos. 50 and 51, and reversal in No. 29. The Union urges this result because it believes that Section 6(j) of the Uni-

versal Military Training and Service Act, 50 U. S. C. App. §456(j), violates both the Establishment and Free Exercise Clauses of the First Amendment. This brief is directed only to those constitutional issues.

Statement of the Cases

The facts of each case are set out in detail in the briefs of the parties. Concisely, Seeger and Jakobson, the respondents in Nos. 50 and 51, and Peter, the petitioner in No. 29, were convicted of having refused to submit to induction into the armed forces. Each of them had claimed exemption under Section 6(j) of the Universal Military Training and Service Act, 50 U. S. C. App. 456(j), which provides in pertinent part:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *.

Seeger set forth his religious motivations[1] in his application for exemption as follows:

> "In a statement attached to the questionnaire, he explained his feeling that 'the existence of God cannot be

[1] The court below noted the concession by the United States that Seeger's objections to service were religiously based. 326 F. 2d at 847.

proven or disproven, and the essence of His nature cannot be determined. I prefer to admit this, and leave the question open rather than answer "yes" or "no." Seeger was anxious to explain, however, that 'skepticism or disbelief in the existence of God does not necessarily mean lack of faith in anything whatsoever * * * Such personages as Plato, Aristotle and Spinoza evolved comprehensive ethical systems of intellectual and moral integrity without belief in God, except in the remotest sense.' Finally, rejecting dependence upon his Creator for a guide to morality, Seeger asserted 'more respect for * * * belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed.'

"With obvious sincerity, Seeger articulately attempted further to expound the ethical position to which he felt driven by his conscience. 'It is our moral responsibility,' he wrote, 'to search for a way to maintain the recognition of the dignity and worth of the individual, the faith in reason, freedom, and individuality, and the opportunity to improve life for which democracy stands.' In language which underscored the ethical foundation of his faith, he decried 'the tremendous spiritual price that man pays for his willingness to resort to the mass destruction of human life to perpetuate his "ideals."' 'I cannot,' Seeger insisted, 'participate in actions which betray the cause of freedom and humanity. Experience with the past indicates that our armament policy will lead to war, and war, with its indiscriminate crushing of human personality, cannot preserve moral values * * * To resort to immoral means is not to preserve or vindicate moral values, but only to become collaborators in destroying all moral life among men.'" 326 F. 2d at 848-9.

The court below set forth Jakobson's religious views in this manner:

> "He begins by defining religion as the sum and essence of one's basic attitudes to the fundamental problems of human existence. He recognizes an ultimate cause or creator of all existence which he terms 'Godness.' In theory an individual's relationship to Godness can take one or the other of two forms, a 'vertical' relationship in which man relates directly to Godness, or a 'horizontal' one in which man relates to Godness indirectly by binding himself to the qualities of Godness that exist in every creation in Mankind and throughout the world. For himself Jakobson rejects the vertical 'one-to-one' relationship because God is unknowable to man, and because action and spiritual growth purportedly based on a direct relationship with Godness must thus lead to error since man can reason but imperfectly about the unfathomable. Moreover, he finds objectionable the egocentric two-dimensional view which the vertical relationship fosters. For him Godness can be approached only through psychic involvement in the three-dimensional world. Inward turning causes spiritual diminution, egocentricity, and passive 'putting up with' the evils of the world rather t. n an active attempt to change it. The way to arrive closer to Godness is by approaching the universals inherent in existence. The individual must deal directly with life, death, health, love, time—the 'givens' of existence stemming from the Ultimate Cause—as he finds them in himself and others." 325 F. 2d at 412-13.

Peter summarized his religious beliefs as follows:

> "Since human life is for me a final value, I consider it a violation of moral law to take human life. I think

I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.

"I consider this belief to be superior to my obligation to the state.

"In so far as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: 'Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands * * * (it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best.'

"I would say that the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic american culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups." 324 F. 2d at 174 n. 2.

Seeger's and Jakobson's convictions were reversed. 326 F. 2d 846 (2nd Cir. 1964) and 325 F. 2d 409 (2nd Cir. 1963). Peter's conviction was affirmed. 324 F. 2d 173 (9th Cir. 1963).

ARGUMENT

POINT I

Section 6(j) is in violation of the Establishment Clause of the First Amendment.

The fatal defect of Section 6(j) is its attempt to define the type of "religious training and belief" which will qualify a conscientious objector for exemption from conscription. It prescribes and sanctions a distinct religion: that which, in the words of the statute, is founded upon "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation. . . ." Since only this type of "religious training and belief" will qualify a conscientious objector for exemption, the statute creates a governmentally sanctioned form of religion and thus directly affronts the First Amendment.

Nearly two decades ago, this Court interpreted the Establishment Clause in the following manner:

> "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of

> any religious organizations or groups and vice versa." *Everson* v. *Board of Education,* 330 U. S. 1, 15-16 (1947).

The conflict with the Establishment Clause in the case at bar is at least as great as that in *Engel* v. *Vitale,* 370 U. S. 421 (1962), and *School Dist.* v. *Schempp,* 374 U. S. 203 (1963). Indeed, the religious character of Section 6(j) is more clearly evident than the school prayers and Bible reading involved in *Schempp* where the religious character of those activities had to be interpreted from their nature, purpose and history. 374 U. S. at 223-24. Here, the religious character of the conscientious objector exemption is plain on the face of the statute.

The Supreme Being definition of Section 6(j) should be compared with the religious qualification for notaries public condemned in *Torcaso* v. *Watkins,* 367 U. S. 488 (1961). The Court's statement in that case is equally applicable to the facts of the present case: "The power and authority of the [United States] thus is put on the side of one particular sort of believers—those who are willing to say they believe in [a Supreme Being]." 367 U. S. at 490. Like *Torcaso,* Section 6(j) as applied to Seeger, Jakobson or Peter, "force[s] him to profess a belief or disbelief in any religion." *Everson* v. *Board of Education, supra,* at 15; *Torcaso* v. *Watkins, supra,* at 495. It compels a conscientious objector to profess a belief in a religion which involves a "belief in a relation to a Supreme Being."

Another vice of the *Torcaso* statute was that it "aid[ed] all religions as against non-believers" and "aid[ed] those religions based on a belief in the existence of God as against those religions founded on different beliefs." 367 U. S. at 495. Section 6(j) aids religion in general as against non-believers, but more particularly it aids religions based upon

a belief in a Supreme Being as against other religions having different beliefs.

The fact that the definition of religion contained in Section 6(j) purports to be denominationally neutral is irrelevant in an Establishment case. *Engel* v. *Vitale, supra,* at 430. Again, the fact that the statute may not directly coerce the practice of an individual's religious beliefs is not a consideration in an Establishment case. *School Dist.* v. *Schempp, supra,* at 223. The reason that the presence or absence of coercion, like the non-denominational character of the activity, is not taken into consideration in an Establishment case is that in such cases the inquiry is to governmental action, not its effect on the individual.

The interdiction of the Establishment Clause is intended to keep government out of religion, to maintain that "wall of separation" between church and state of which Jefferson wrote. As this Court said of the Establishment Clause in *Engel* v. *Vitale,* "Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion." 370 U. S. at 431. The vice of the statute involved here is that it places the Federal government's imprimatur on those religions which believe in the existence of a Supreme Being to the exclusion of those which do not.

Nor can it be claimed that the statute has independent secular justifications such as the Sunday laws sustained in *McGowan* v. *Maryland,* 366 U. S. 420 (1960), or the monogamy laws sustained in *Davis* v. *Beason,* 133 U. S. 333 (1890) and *Reynolds* v. *United States,* 98 U. S. 145 (1879). Here there can be no conclusion "that the general welfare of society, quite apart from any religious considerations, demands such regulation." *McGowan* v. *Maryland, supra,* at 442. The religious nature of Section 6(j) is not an

indirect by-product of legislation designed to achieve another public end. Rather, its direct and sole effect is to aid religion.

POINT II

Section 6(j) is in violation of the Free Exercise Clause of the First Amendment.

Quite apart from the invalidity of Section 6(j) under the Establishment Clause, it also violates the Free Exercise Clause. As demonstrated by the Second Circuit in its opinion in *Seeger*, the statutory requirement of belief in a Supreme Being "cannot embrace all those faiths which can validly claim to be called 'religious' ". 326 F. 2d at 852-3. See also *Torcaso* v. *Watkins, supra,* at 495 n. 11. Since by its very terms Section 6(j) excludes those who do not profess a belief in a "relation to a Supreme Being," it penalizes such individuals because of their religious beliefs.

It is no answer to argue that exemption from military service is a matter of legislative grace. Only recently this Court has held that government may not grant a benefit upon conditions which force the recipient to violate his religious beliefs. *Sherbert* v. *Verner*, 374 U. S. 398 (1963). There the Court said:

> "The ruling forces [appellant] to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." At 404.

Furthermore, it cannot be argued that the conscientious objection exemption is a "privilege" and not a "right". As the Court said in rejecting this argument in *Sherbert*:

> "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege . . . [T]o condition the availability of benefits upon this appellant's willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties." 374 U. S. at 404, 406.

See also *Speiser* v. *Randall*, 357 U. S. 513, 518-19 (1958).

The statute's Supreme Being test is similar in its effect to the religious tests and oaths condemned in a long series of decisions of this Court. See, e.g., *Torcaso* v. *Watkins*, *supra*; *Girouard* v. *United States*, 328 U. S. 61 (1946); *Schneiderman* v. *United States*, 320 U. S. 118 (1943); *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624 (1943). The religious test in the instant cases operates with the certain effect of restricting the freedom of nontheistic and polytheistic conscientious objectors. As this Court stated in *Girouard* v. *United States*, *supra*, at 68:

> "The struggle for religious liberty has through the centuries been an effort to accommodate the demands of the State to the conscience of the individual. The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. Throughout the ages men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion guaranteed by the First Amendment is the product of that struggle."

CONCLUSION

It may well be argued that reading the statutory exemption to include non-theistic and polytheistic conscientious objectors would operate as an establishment of religion, even as thus broadly construed. The short answer to such a contention is that the choice of language contained in the statute at bar is that of Congress and not of the Court. So long as Congress has seen fit to confine the conscientious objector exemption to religious grounds, it is the duty of the Court to construe and apply it consistently with the principles of the First Amendment. It will be time enough to consider the constitutionality of confining the exemption to religious grounds when the statute is attacked for that reason. Having granted the exemption, however, Congress is precluded by the First Amendment from attempting to limit the type of religious beliefs which may qualify, or from restricting it to those who come within the definition. For even if it be assumed that Congress has valid reasons for granting exemption only to religious conscientious objectors, it does not follow that government may put itself in the business of defining that religion and testing an individual's beliefs against the definition.

It is no answer to state that there must be some definition of religion in order to ascertain the bona fides of the religious beliefs of one claiming conscientious objector status. Religious beliefs have always been a matter of individual conscience. Government cannot test their validity. *United States* v. *Ballard*, 322 U. S. 78 (1944). In the final analysis, this must rest upon the good faith of the individual who, under our tradition of religious liberty, must be allowed to define his own religious beliefs. Any statute or regulation which authorizes government to test the validity of an individual's beliefs violates these fundamental

principles. It is for these reasons that Section 6(j) must fall. Its Supreme Being test is in effect an Establishment by Congress of a monotheistic religion. Moreover, its limitation only to those who meet the Supreme Being test is a burden on the free exercise of those who believe in non-theistic and polytheistic religions.

For the reasons stated above, the decisions below in Nos. 50 and 51 should be affirmed, and the decision in No. 29 should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 50

UNITED STATES OF AMERICA,
Petitioner,

v.

DANIEL ANDREW SEEGER,
Respondent,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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INDEX

	PAGE
Constitutional Provisions and Statutes Involved	1
Questions Presented	2
Statement of the Case	4
(1) As to the Concessions and Stipulations Made Below	5
(2) As to the Reason for Denial of an Exemption to Respondent	7
(3) Facts Disclosed in Respondent's Selective Service File	9
(4) Prior Proceedings	18
ARGUMENT	
POINT I—Section 6(j) of the Universal Military Training and Service Act (50 U.S.C.A., App. §456(j), as amended by Congress in 1948 by the insertion of the "Supreme Being" provision, is invalid, as in violation of the "religion" clauses of the First Amendment of the United States Constitution	19
(a) As to the "Establishment Clause"	22
(b) As to the "Free Exercise Clause"	28
POINT II—The "Supreme Being" provision of Section 6(j) also violates the due process clause of the Fifth Amendment of the Federal Constitution	35
POINT III—That the exemption benefit granted under Section 6(j) may represent merely a "privilege" and not a "right" does not save this statute from constitutional infirmity	38

PAGE

POINT IV—The "religion clauses" of the First Amendment are applicable to all kinds of religion —religions related to a belief in a Supreme Being and religions of other beliefs—and include respondent's religion 41

POINT V—No prior federal draft act has contained such a "Supreme Being" provision or drawn a line between religions related to a positive belief in a "Supreme Being" and religions not so related 55

POINT VI—The decisions of U. S. Courts of Appeal, cited in the Government's brief, which have upheld the constitutionality of the "Supreme Being" provision of Section 6(j) were erroneously decided in light of existing constitutional doctrines and are otherwise distinguishable 61

POINT VII—The Selective Draft Law Cases are not controlling here 64

POINT VIII—Additional comments in reply to Government's brief 65

Conclusion 73

CITATIONS

Abington School District v. *Schempp*, 374 U. S. 203, 220, 222-3, 226, 265 (1963) 23, 26, 28, 29, 30, 35, 43, 44, 51, 67, 68

Berman v. *United States*, 156 F. 2d 377 (9th Cir. 1946) cert. den. 329 U. S. 795 (1946) 35, 49, 60, 62, 63

Bolling v. *Sharpe*, 347 U. S. 497, 499 (1954) 36

Braunfeld v. *Brown*, 366 U. S. 599, 607 (1961) 31, 67

Cantwell v. *Connecticut*, 310 U. S. 296, 303-4 (1940) 24, 26, 43

Church of the Holy Trinity v. *United States*, 143 U. S. 457, 470-1 (1892) 24, 42

PAGE

Clark v. *United States*, 236 F. 2d 13 (9 Cir. 1956) cert. den. 352 U. S. 882 ..... 61, 62
Cleveland v. *United States*, 329 U. S. 14 (1946) 31

Davidson v. *United States*, 225 F. 2d 836 (9 Cir. 1955), cert. den. 350 U. S. 887 (1955) 61, 62
Davis v. *Beason*, 133 U. S. 333, 342 (1890) 24, 31, 42

Engel v. *Vitale*, 370 U. S. 421 (1962) 23, 25, 26, 28, 43, 51
Etcheverry v. *United States*, 320 F. 2d 873 (C.A. 9), cert. den. 375 U. S. 930 ..... 61, 62
Everson v. *Board of Education*, 330 U. S. 1, (1947) 14-15, 23, 26, 31-3, 43, 44

Fellowship of Humanity v. *County of Alameda*, 153 Cal. App. 2d 673, 315 P. 2d 394 (1957) 22, 47, 51
First Unitarian Church v. *Los Angeles*, 357 U. S. 545, 546-7 (1958) 39
Follett v. *McCormick*, 321 U. S. 573 (1944) 43
Fowler v. *Rhode Island*, 345 U. S. 67, 69 (1953) 27, 43

George v. *United States*, 196 F. 2d 445 (9 Cir. 1952), cert. den. 344 U. S. 843 ..... 61, 62, 63
Girouard v. *United States*, 328 U. S. 61, 68, 69 (1946) 38, 42, 71

Hamilton v. *Regents of the University of California*, 293 U. S. 245, 263-4 (1934) 32, 38

Illinois ex rel. McCollum v. *Board of Education*, 333 U. S. 203, 210, 211 (1948) 23, 26, 43

Jacobson v. *Massachusetts*, 197 U. S. 11, 29 (1905) 38

MacMurray v. *United States*, 330 F. 2d 928, 929 (1964) 63
McGowan v. *Maryland*, 366 U. S. 420 (1961) 23, 26, 43 44, 45, 68
Minersville School District v. *Gobitis*, 310 U. S. 586 (1940) 33
Murdock v. *Pennsylvania*, 319 U. S. 105 (1943) 27, 43

PAGE

Peter v. *United States*, 324 F. 2d 173 (C.A. 9), pending on writ of certiorari, No. 29 this Term.....34, 53, 61, 63, 71

Prince v. *Massachusetts*, 321 U. S. 158 (1944) 31

Reynolds v. *United States*, 98 U. S. 145 (1878) 31

Saia v. *New York*, 334 U. S. 558, 564 (1948) 44

Selective Draft Law Cases, 245 U. S. 366 (1918)....38, 59, 64

Sherbert v. *Verner*, 374 U. S. 398, 402, 404-5, 409 (1963) 26, 30, 31, 32, 39, 40, 43, 66

Speiser v. *Randall*, 357 U. S. 513, 518-9, 536 (1958)....39, 40

Torcaso v. *Watkins*, 367 U. S. 488 (1961)....22, 23, 24, 26, 30, 36, 40, 43, 47, 51, 56, 61, 62, 63, 69, 72

United States ex rel. Reel v. *Badt*, 141 F. 2d 845 (2 Cir. 1944) and 152 F. 2d 637 (2 Cir. 1945), cert. dismissed, 328 U. S. 817 .....6, 7, 48, 51, 60

United States v. *Ballard*, 322 U. S. 78, 86, 92-5 (1944) 27, 34, 43, 72

United States v. *Bendik*, 220 F. 2d 249 (2 Cir. 1955)..61, 62, 63

United States v. *DeLime*, 23 F. 2d 96 (3 Cir. 1955)....61, 62, 63

United States ex rel. Phillips v. *Downer*, 135 F. 2d 521 (2 Cir. 1943) 6, 7, 49, 51, 60

United States v. *Jakobson*, 325 F. 2d 409, 415, pending on writ of certiorari No. 51, this Term....5, 29, 34, 35, 53, 60, 67, 71

United States v. *Kauten*, 133 F. 2d 703 (2d Cir. 1943) 5, 6, 7, 17, 24, 41, 44, 47, 50, 51, 60, 71

United States v. *Macintosh*, 283 U. S. 605, 622-4, 625 (1931) 24, 38, 42, 60, 63, 68

Washington Ethical Society v. *District of Columbia*, 101 U. S. App. D.C. 371, 249 F. 2d 127 (1957)....22, 47, 52

West Virginia Board of Education v. *Barnette*, 319 U. S. 624, 639, 642 (1943) 27, 33, 37, 43, 44

Zorach v. *Clauson*, 343 U. S. 306, 312, 314, 315 (1952) 23, 26, 60, 68

Constitutional Provisions, Statutes and Regulations

Constitution of the United States:

PAGE

Article I, Section 8, Clause 12 ..... 38, 70

Article VI, Clause 3 ..... 41, 69

Bill of Rights Amendment 57

First Amendment 1, 2, 3, 19, 21, 22, 24, 25, 26, 27, 28, 29, 30, 33, 35, 36, 37, 40, 41, 42, 44, 49, 51, 55, 58, 59, 62, 63, 64, 66, 68, 69, 70, 72

Fifth Amendment 1, 2, 3, 35, 36, 37, 40

Fourteenth Amendment 25, 32, 36

Constitution of New York State:

Art. I, Section 3 70

Code of Federal Regulations (Vol. 32):

Section 1632.14 18

Continental Congress Resolution (2 J. Cont. 189 (July 18, 1775), Library of Congress 1905) 57

"Declaration of Rights" of Virginia (9 Hening, Statutes of Virginia 109, 111-12) 45

Draft Act of 1863 (Civil War):

12 Stat. 731, 733 (1863) 21, 58, 59

13 Stat. 9 (1864) 21, 59

Militia Act of January 21, 1903:

32 Stat. 775 (1903) 59

National Defense Act of June 2, 1916:

39 Stat. 197 (1916) 59

Rhode Island Act of Aug. 13, 1673 56

PAGE

Selective Draft Law of 1917:

40 Stat. 76 (1917) 21, 59, 64

Selective Training and Service Act of 1940..... 6, 20, 21, 33, 41, 60, 67, 71

54 Stat. 885 (1940) §5(g) 20

50 U.S.C.A. App. §305(g) 47, 49

Selective Service Act of 1948:

62 Stat. 604; §6(j) 20, 24, 60, 61

Universal Military Training and Service Act:

Section 6(j), Title 50, U.S.C.A., App. §456(j).... 2, 3, 8, 19, 27, 28, 30, 31, 33, 35, 37, 38, 55, 61, 62, 63, 65, 68, 69

Section 462 (Title 50, App., U.S.C. §§451, et seq.) 18

65 Stat. 75 (1951) 19

Virginia Statute for Religious Freedom (12 Hening, Statutes of Virginia (1823), 84-6) 45

Authorities

American College Dictionary 54

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PAGE

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Jefferson, "The Jefferson Bible" 46

Jefferson, "Letter to Benjamin Rush" (1803) 46

Jefferson, "Letter to Peter Carr" 47

Jefferson, "Notes on Virginia" 46

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Kurland, "Religion and the Law" (1961) at pp. 37-38 ..... 60, 64

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48 Minnesota L. Rev. 409 (1952) 56

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PAGE

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Selective Service System, 1 Background of Selective Service 61 (Special Monograph 1947) 58

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IN THE

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OCTOBER TERM, 1964

No. 50

UNITED STATES OF AMERICA,

Petitioner,

v.

DANIEL ANDREW SEEGER,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

Constitutional Provisions and Statute Involved

U. S. Constitution, Amendment I, provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *"

U. S. Constitution, Amendment V, provides in pertinent part:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *"

Section 6(j) of the Universal Military Training and Service Act (Title 50, U.S.C.A., App. §456(j)), provides in pertinent part:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. • • •"

Questions Presented

1. Is Section 6(j) of the Universal Military Training and Service Act (50 U.S.C.A., App. §456(j)), as amended by Congress in 1948 by the insertion of the "Supreme Being" provision, invalid, as in violation of the "Establishment of Religion" and "Free Exercise of Religion" clauses of the First Amendment of the United States Constitution and, also, of the "Due Process" clause of the Fifth Amendment thereof?

2. Whether, in granting an exemption from combatant training and service in the armed forces of the United States to any person "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form", Congress, constitutionally, could further require, as a condition and in limitation of such exemption, that such person's religious training and belief in this connection means a "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation • • •"?

3. Was not the decision and judgment of the Court of Appeals herein correct in reversing the judgment of the District Court, and in deciding that Section 6(j) of the Universal Military Training and Service Act (50 U.S.C.A., App. §456(j)) violates the First and Fifth Amendments of the United States Constitution, that respondent was improperly convicted of violating said Act and that respondent is entitled to exemption as a conscientious objector under said Section 6(j)?

Respondent denies that the "Question Presented" herein is as stated on page 2 of the Government's brief; and points out that this statement differs materially from the "Question Presented" as stated on page 2 of the Government's petition for a writ of certiorari herein.

Furthermore, respondent denies that the question involved is that stated on page 22 of the Government's brief, as follows:

> "Thus, the Court had presented to it the exact question involved in this case—whether granting an exemption to persons who will not participate in war because of religious convictions, while failing to grant one to non-religious conscientious objectors violates the First Amendment."

The question in this case is not as between a "religious conscientious objector" and a "non-religious objector". Nor is it confined to a claimed violation of the First Amendment, but, rather involves, also, a claimed violation of the Fifth Amendment.

The Government has *conceded* throughout the proceedings below that Seeger is a "religious" conscientious objector; or, stated otherwise, that Seeger is conscientiously opposed to participation in war in any form by reason of religious training and belief. Admittedly, Seeger's religious training and belief, on which his con-

scientious objection is predicated, is not a belief in relation to a Supreme Being. Because of his conviction that the existence of God, or a Supreme Being, cannot be proven or disproven, he could not, affirmatively or categorically, answer the question as to whether or not he believed in a Supreme Being and, accordingly, he was denied exemption.

Thus, the question in this case concerns the authority of Congress to grant an exemption to a religious conscientious objector whose religious belief is in relation to a Supreme Being and who affirmatively expresses a belief in a Supreme Being, but to deny an exemption to a religious conscientious objector whose religious belief is not related to a positive belief in a Supreme Being and who, for lack of proof, cannot, affirmatively or categorically, profess a belief or a disbelief in a Supreme Being.

The basic issue is whether Congress, constitutionally, can make such a law which sets up such a preference, distinction and classification in respect of religions.

Statement of the Case

This statement is deemed necessary to correct certain material omissions and inaccuracies in "Petitioner's Statement" (Gov. Br., pp. 2-9).*

Neither in its "Statement", nor elsewhere in its brief, does the Government make it clear that Seeger's claim of exemption as a conscientious objector arose by reason of religious training or belief, albeit not a religious belief in relation to a Supreme Being.

As the record below shows, Seeger was denied exemption as a conscientious objector solely because his religious training and belief was not of the type of religious train-

* References herein to "Gov. Br." refer to pages of "Brief for the United States" filed by Petitioner.

ing and belief required and defined in the present statute, i.e., a belief related to a Supreme Being. Nowhere in the record or in the prior proceedings is there any evidence or any finding or holding that Seeger's conscientious objection was non-religious or based on political, sociological or philosophical views, or merely a personal moral code—rather than on a religious training and belief.

(1) As to the Concessions and Stipulations Made Below

There is no reference in the Government's brief to the stipulations and concessions made by it in the courts below, except for a brief, inexact, fine-print footnote appearing on page 77, stating:

> "On the other hand, the government has stipulated that respondent does oppose war on the ground of conscience and therefore satisfies the definition of religion in *Kauten*" (R. 49).

The Court of Appeals, in its opinion, refers to these concessions, as follows:

> "Although the government has conceded that Seeger's abhorrence of war is both sincere and predicated on 'religious training and belief,' as the phrase had been defined by this Court prior to the addition of the 'Supreme Being' clause to the statute, *United States* v. *Kauten*, 133 F. 2d 703 (2d Cir. 1943), appellant's draft board denied the exemption on the basis of its finding that Seeger's views were not grounded upon 'a belief in a relation to a Supreme Being'." (R. 26)*

> "It is to be emphasized once again that there is no question in this case, as there was in *Jakobson*,

* References herein to "R." refer to the "Transcript of Record". References to "GX" refer to the "Government's Exhibits" herein.

> as to the sincerity of Seeger's beliefs or the tenacity with which they are held. With commendable candor, the government has fully conceded that Seeger's views fall squarely within the definition of 'religion' announced for this Circuit in *Kauten*, and subsequently reaffirmed in *Phillips* and *Reel*." (R. 37)

The decision of the District Court, also, recognized and was predicated upon these stipulated facts. It stated:

> "There was proof by stipulation that the grounds on which defendant claimed exemption are religious and arise from religious training and belief by reason of which defendant is conscientiously opposed to participation in war fall within the definitions of religion as set forth in the following cases, determined by the Second Circuit Court of Appeals: United States *v.* Kauten, 133 F. 2d 703 (1943); United States ex rel. Phillips *v.* Downer, 135 F. 2d 521 (1943); United States ex rel. Reel *v.* Badt, 141 F. 2d 845 (1944), cert. dismissed 328 U. S. 817. (See minutes 35, 36)" (R. 20-21)

As appears from the trial minutes, the Government conceded that Seeger's belief on which he based his conscientious objection and claimed exemption is religious, and arises from a religious training and belief, within the definition of religion set forth in the *Kauten, Phillips* and *Reel* cases; and he would have been entitled to exemption as a conscientious objector under the religious training and relief provision in the 1940 Draft Act, as construed by the Second Circuit Court of Appeals in those cases (R. 42-7, 48-51).

The Government further stipulated that defendant's witnesses, theological seminarians, would have testified that his beliefs and views, as set forth in his Selective Service File (GXs. 1-61; R. 55-121) on which he grounded his

claim of exemption as a conscientious objector, "are religious and arise from religious training and belief by reason of which defendant is conscientiously opposed to participation in war within the definitions of religion" as set forth in said *Kauten, Phillips* and *Reel* cases (R. 50); and "could be considered to be a religious position on a somewhat broader definition of religion" (R. 46); and "that religion is broad enough to embrace a coherent, deeply felt humanitarian, ethical, thoroughgoing abhorrence of war without a belief in a Supreme Being or super or supra-natural consequences," and, particularly, if the person involved "is responding to the voice of conscience" (R. 48).

In reliance on said stipulations, Seeger did not call such witnesses (R. 41, 43, 44-6).

On his part, Seeger conceded his religious training and belief was not a belief in a relation to a Supreme Being (R. 49-51).

Seeger's complete sincerity has been unquestioned, throughout (R. 6, 7, 10-14, 26, 29, 30, 37).

(2) As to the Reason for Denial of an Exemption to Respondent

Throughout its brief, the Government, erroneously, assumes and states that Seeger's conscientious objection and non-exemption were based on a non-religious position and on essentially political, sociological or philosophical views or a merely personal moral code. (Gov. Br. pp. 10-12, 17, 22-23, 35-6, 75-6, 77-8)

Typical statements along this line, are the following:

> "For respondent derives his opposition to war from political sociological, and philosophical analysis; he is obeying a personal moral code based upon 'how he feels towards his fellow man.'" (Gov. Br. p. 10)

* * *

> "He derives his opposition to war, sincere as his conviction may be, not from religious teaching but from essentially political, sociological, or philosophical views." (Gov. Br. p. 17)
>
> • • • •
>
> "On the other hand, non-religious objectors, like respondent, reach their moral positions entirely on the basis of their own reasoning." (Gov. Br. p. 77)

Neither the Court of Appeals nor the District Court made any such finding or holding, but found, rather, that although Seeger's grounds for exemption were religious, he was denied exemption because his religious views were not grounded upon an affirmative belief in a Supreme Being (R. 20-22, 26, 30).

Nor did the Hearing Officer so find, but rather, recommended Seeger's exemption as a conscientious objector on the ground "that his conscientious objections are based upon this individual training and belief, both of which include research and religious and cultural fields (R. 7).

Nor did the Department of Justice so find. Its recommendation was, "based upon the facts contained herein", that "the registrant has failed to make a claim within the meaning of section 6(j) of the Act, since his objections are not based upon religious training and belief in relation to a Supreme Being, as defined in said Act" (R. p. 9).

Thus, Seeger was denied exemption solely because his conscientious objection was based upon a religious training and belief, which was not related to Supreme Being and not because it was based upon a non-religious position, or upon essentially political, sociological or philosophical views or a merely personal moral code.

An underlying fallacy of the Government's arguments is its failure to recognize these conceded facts and these grounds, upon which all of the prior proceedings were based.

(3) Facts Disclosed in Respondent's Selective Service File

The Government's evidence consisted of respondent's Selective Service File and a stipulation as to respondent's refusal to submit to induction on October 20, 1960, claiming the order of induction was invalid as he had wrongfully been denied exemption as a conscientious objector (GXs. 1-61; R. 21, 55-120, 15).

Respondent offered no witnesses but, in lieu thereof, a stipulation as to proferred evidence was entered into between the Government and respondent, as noted above.

The essential facts disclosed by his Selective Service File follow:

Respondent registered with his local draft board on September 4, 1953, the day after his 18th birthday. On October 21, 1953, he executed and filed his Classification Questionnaire (GX 3; R. 55-64) answering all applicable questions and noting he was unmarried and a chemical engineering college student at Cooper Union. On this form, he did not execute the claim for conscientious objector exemption, but, as requested, simply expressed the opinion that his classification should be 2-S (student). (GXs 3, 6; R. 55-65, 15, 27).

He was initially classified 1-A on October 22, 1953. He was reclassified 2-S as a student on July 26, 1955 and remained in that classification until August 26, 1958, when he was reclassified 1-A (GXs 3, 6; R. 62-3, 65).

On July 12, 1957, respondent wrote the Board claiming exemption as a conscientious objector, because "as a result of the resolution of a number of problems of conscience with which I have been preoccupied for the past month" he was conscientiously opposed to war (GX 11; R. 66-7, 15, 27). He was sent Special Form for Conscientious Objector, which he filled out and filed with supporting

documents on July 29, 1957 (GXs 12, 13; R. 68-77, 15, 27).

Therein (GX 13; R. 69, 15-16, 27-8), defendant executed the "Series I—Claim for Exemption", as follows:

> "(B) I am, by reason of my 'religious' belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces."*

His answers to the questions in "Series II—Religious Training and Beliefs" were:

(1) As to question "1", Do you believe in a Supreme Being?", respondent did not check the "Yes" or "No" boxes, but added and checked a new third box with the notation: "Please see attached sheet.".

In the attached sheets, in answer to question "1", concerning his belief in a Supreme Being, he stated in part (R. 73, 16, 28):

> "Of course, the existence of God cannot be proven or disproven, and the essence of his nature cannot be determined. I prefer to admit this and leave the question open rather than answer 'yes' or 'no'.
>
> "However, skepticism or disbelief in the existence of God does not necessarily mean lack of faith in anything whatsoever. The martyrdom of Socrates is sufficient proof that irony and skepticism may be consistent with positive faith."
>
> He asserted that: "Action taken through fear of God or desire for eternal reward is not moral conduct but merely expediency"; that he had more

* In doing so, he altered the printed form by placing quotation marks around the word "religious", and deleting the words "training and" (R. 28, 69).

> respect for "belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed"; and that "the cosmic order does, perhaps, suggest a creative intelligence."

(2) As to question "2", "Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation." Respondent answered: "Please see attached sheet". And in the attached sheets, in answer to question "2", he further expounded the position in respect of war to which he felt driven by his conscience. He wrote, *inter alia* (R. 73-6, 28-9):

> "This brings me to what I believe to be the most ironic result of our commitment to violence—the tremendous spiritual price that man pays for his willingness to resort to the mass destruction of human life to perpetrate his 'ideals' ".
>
> • • •
>
> "A possible alternative to violence is offered by the Quakers in their pamphlet *Speak Truth to Power*, from which much of my thought is derived" (R. 76).

(3) In answer to question "3", "Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above," he wrote: Please see attached sheet." On the attached sheet (R. 77), he listed various of his readings, including those of religious writers such as Mohandas Gandhi and E. Stanley Jones, and various religious publications of the American Friends Service Committee (Quaker).

(4) In answer to questions "4", "Give the name and present address of the individual upon whom you rely

most for religious guidance," he wrote: "Please see attached sheet". On the attached sheet (R. 77), he stated:

> "I rely on no particular person for religious guidance. I resolve spiritual and ethical problems by reading relevant essays or books, by discussion and debate with colleagues, and ultimately, by following the dictates of my conscience."

(5) In answer to question "5", "Under what circumstances, if any, do you believe in the use of force?", on an attached sheet (R. 77), he referred to Tolstoi's views, based on the teachings of Jesus and the "Sermon on the Mount", that "no use of force is ever right"; and suggested that "if the way of Jesus is sublime", there still might be other ways and he tended to favor a less absolute rule of conduct in respect of the use of force.

Respondent's 2-S classification was continued until August 26, 1958 when he was reclassified as 1-A (GX 3; R. 62-3, 16). He was ordered for a pre-induction physical examination on October 17, 1958. He then requested and was accorded a personal appearance before the Local Board, which thereafter voted to continue his 1-A classification (GX 19, 3; R. 78, 62-3, 16, 29).

In October, 1958, respondent prosecuted an appeal to the Appeal Board on the ground he was a conscientious objector (GX 3, 20, 21, 24; R. 79, 16, 29, 63).

On November 18, 1958 he filled out and filed a questionnaire for a registrant claiming to be a conscientious objector (GX 24, 3; R. 81-4, 63), which was principally devoted to the "use of force," and therein he discussed religion and conscience and stated, among other things, "* * * all philosophies or religions, however sincere, must come to grips with questions which cannot be answered by pat phrases * * * the conscience must always search, sometimes painfully, for the answers to the moral ques-

tions which life presents"; and, "we can only strive for the good by a constant series of adjustments consonant with the demands of conscience and those of reality. This is called 'drawing the line'. Thus, an orthodox Jewish person must in some way reconcile traditional orthodoxy with the demands of modern life. Similarly, many Christians would, in good conscience, draw a line between their religious demands for brotherly love and samaritan-like assistance to one's neighbor, and their own business activities • • •"

In March, 1959, the Appeal Board tentatively determined he should not be classified in Class 1-O or lower, and sought an advisory recommendation from the Justice Department on his claim as a conscientious objector (GX 26, 3; R. 85, 16).

The F.B.I. conducted an investigation of him. Respondent was not permitted to see its reports or to respond thereto (GX 27-A, 27-B; R 86, 87, 16), but only a resumé thereof (GX 30(b); R. 10-14, 16-29).

The F.B.I. resumé was highly favorable to him (R. 10-14, 29, 8). It revealed he was the son of a "very fine, exceptionally religious" Roman Catholic family and two of his uncles were priests; he was an honor student in high school and had an outstanding record in college, academically and in extra-curricular activities; he was described variously, as a person of "the highest integrity and character", "serious minded", "very intelligent", "a very nice young man", a "person of high moral character", "a very good student", "sincere", "completely trustworthy", "an idealist", "a very gentle person", with a moral behavior "outstanding" and "above reproach", "absolutely sincere in his conscientious-objector claim"; he had recently "joined the American Friends Society"; he did not use profanity, smoke or drink and had no record of legal or economic difficulties (R. 10, 11, 12, 13, 14, 29, 8).

Respondent filed his comments on the F.B.I. resumé (GX 27-C; R. 88-91) in which he pointed out that a person's religious connections "are primarily a matter of individual conscience", and it cannot be expected that he "describe the items of his religious belief to professors or neighbors"; and though "for the past year the registrant has been working for the American Friends Service Committee in mental institutions and other community projects", the F.B.I. interviewed none of the Committee.

Respondent had a hearing before the Hearing Officer for the Department of Justice on September 10, 1959 (GX 27-A; R. 86). He was accompanied by two witnesses, a professor and a classmate. He indicated "that he was not affiliated with any of the sects to which many of the conscientious objectors belong, but had strong sympathetic support for the Quaker movement" and "sympathy with some of the views of Jehovah's Witnesses but criticized their dogmatic approach to the problem" (R. 5).

He testified "that he had been convinced after a thorough research and reading into history, *particularly various religious trends, theories, and teachings*, that peace throughout the world could only be accomplished by the laying down of arms by all" (R. 6). (Italics added.)

The Hearing Officer's report to the Department of Justice was never shown to respondent and has been excluded from Seeger's Selective Service File, but it is reflected in the Justice Department's recommendation dated October 22, 1959 (GX 30(a); R. 4-10); and therefrom, it appears the Hearing Officer recommended that respondent's appeal, on the ground of conscientious objection, be sustained and that he be granted exemption. As to this, the recommendation stated (GX 30(a); R. 7):

> "The Hearing Officer concluded that the registrant is completely sincere in making his claim and that the character of registrant's beliefs, as adduced

> at the hearing and from the various documents on file, are honest. He found that the registrant is opposed to participation in war in any form; that his conscientious objections are based upon his individual training and belief; both of which include research in religious and cultural fields; that the registrant is sincere in his claim which is made in good faith. He recommended that the appeal of the registrant based upon grounds of conscientious objection be sustained."

Despite this recommendation, the Department of Justice reached an opposite conclusion in its recommendation (GX 30(a); R. 9, 17, 30), stating:

> "Based upon the facts contained herein the Department of Justice concludes that the registrant has failed to make a claim within the meaning of section 6(j) of the Act, since his objections are not based upon religious training and belief in relation to a Supreme Being, as defined in said Act."

As the Court of Appeals said (R. 30):

> "It is immediately apparent from a reading of the Department's report, that its decision rested entirely on the finding that Seeger's objections, however sincere, were not based upon 'a belief in a relation to a Supreme Being', as required by §6(j) of the Act."

The Appeal Board furnished respondent with a copy of this recommendation (GX 31; R. 92) and he was permitted to, and did, reply thereto (GX 33-A, R. 93-108). After quoting concepts of Thomas Jefferson (R. 94), in which he had been "thoroughly schooled", Seeger expressed chagrin that he had to present a "defense of my right to be treated as others even though my theological notions differ from theirs" (R. 95).

He wrote:

> "What does it matter how the universe is held together? To me it would be a great crime to participate in the continuation and extension of the evils of war (R. 96).
>
> • • •
>
> "Even rejected and unpopular points of view must be protected (R. 96).
>
> • • •
>
> "How can the distribution of privileges along lines of religious or political belief be considered as other than contrary to our doctrines of freedom and equality" (R. 97).

In a paragraph on "Religion and The Deity" he said:

> "As Benjamin Franklin wisely understood, true religious motivation is not something to be identified with specific dogmas and creeds. It is especially important to realize that religious feeling need not have any connection with the supernatural. In fact, through history, the highest kind of religious feeling has occurred when men dared to throw off a burden of historic and dogmatic encumbrances which were fundamentally irrelevant to the problems of life. John Stuart Mill held that the essence of religion is a sense of unity with mankind. According to Auguste Comte 'religion . . . finds its actual expression in the active service of humanity.'
>
> "Little can be said to justify a contention that people who do not assert the existence of a divinity beyond the realm of nature are not as devoted to just and humane causes as those who do. The overwhelming majority of thinkers would deny any *exclusive* identification of belief in supernatural systems with religiousness and right conduct" (R. 98).

(After discussing John Dewey, Seeger made a statement, quoted on pages 8-9 of the Government's brief, which is completely in line with the concept of religion set forth in the *Kauten* case.)

In another paragraph (R. 99-100), he commented on concepts of God. He said: "The result is a wide variety of contradictions in what people would have us believe is the word of God." He said he had no quarrel with "otherworldly religion", but that:

> "Since traditional religious causes have encompassed both great good and great evil perpetrated in the name of God, how can citing God be itself considered an indicative factor of the justice or merits of a cause (R. 100)?
>
> * * *
>
> "Nowadays not even the most orthodox theologian pretends that the existence of God is something which can be 'proven'. Those who grant the existence of a Deity outside the power of nature usually understand that this is so by mystical perception or faith" (R. 100).

In an "Appendix" he set forth the views of some famous persons, concerning the nature of "religion". To these the Court is referred (R. 103).

Attached to these papers was a hand written statement from Seeger's mother which attests to his sincerity and the family background of his conscientious objection and his religious beliefs and training, although he "departed from the formal faith in which he was reared, but not from the ideas that were crooned to him", and left home because of "differences on the subject of religion" (R. 105, 108).

On May 23, 1960, the Appeal Board voted to classify him as 1-A (GXs 34, 36, 37-A; R. 110, 111, 112).

At respondent's request, and on his behalf, the National Director of Selective Service appealed to the Presidential

Appeal Board (GXs 37-A, 37-C, 37-D, 43, 44; R. 112, 113, 114, 115, 116), which on August 25, 1960, voted to classify him 1-A (GX 48; R. 117).

On October 3, 1960, respondent was ordered to report for induction on October 20, 1960 (GX 51; R. 118). He reported at the place specified but refused to submit to induction (GX 52; R. 119), claiming he had been wrongfully denied exemption as a conscientious objector, seemingly, in part, basing his refusal on his membership in American Friends Service Committee. On the trial he so stipulated (GX 61; R. 121).

On December 1, 1960, respondent was reported to the United States Attorney for prosecution as a delinquent (GX 56; R. 120). Two years later he was indicted (R. 3).

(4) Prior Proceedings

By indictment filed November 13, 1962, respondent was charged with a violation of Section 462 of the Universal Military Training and Service Act (Title 50, App., U.S.C. §§ 451, et seq.) and the rules and regulations thereunder (32 Code of Federal Regulations, Section 1632.14 for unlawfully and knowingly failing and refusing to perform the duty of submitting to induction on October 20, 1960 (R. 2, 3, 14, 26).

Respondent appeared and entered a plea of "not guilty" on November 20, 1962, was released on his own recognizance, and waived a jury trial (R. 2, 15).

He was tried before District Judge Richard H. Levet on March 26, 1963 (R. 41-54, 15). Thereon, a motion to dismiss the indictment was made on the constitutional grounds, there stated (R. 41, 53-4). Decision was reserved (R. 54).

In a decision and opinion filed April 24, 1963 by Judge Levet, respondent was found guilty (R. 14-25; 216 Fed. Supp. 516). On May 28, 1963, respondent was sentenced

to imprisonment for one year and one day, not suspended, and was released on his own recognizance pending appeal (R. 2; Transcript of Sentencing Proceeding). The judgment was made and entered on that date (R. 2).

His appeal to the Court of Appeals was duly noticed on June 6, 1963. On January 20, 1964 the Court of Appeals unanimously reversed the judgment of the District Court, with an opinion holding the statute unconstitutional, and entered judgment accordingly (R. 25-40; 326 F. 2d 846).

On March 20, 1964, the Government filed a petition for a writ of certiorari, which was granted by this Court on May 4, 1964 (377 U. S. 922).

ARGUMENT

POINT I

Section 6(j) of the Universal Military Training and Service Act (50 U.S.C.A., App. §456(j)), as amended by Congress in 1948 by the insertion of the "Supreme Being" provision, is invalid, as in violation of the "religion" clauses of the First Amendment of the United States Constitution.

Under the First Amendment, Congress can "make no law respecting an establishment of religion, or prohibiting the free exercise thereof".

Section 6(j) of the present Universal Military Training and Service Act, under which respondent was indicted and convicted (65 Stat. 75 (1951), as amended; 50 U.S.C.A., App., 456(j)), so far as relevant, provides:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of

> the United States who, *by reason of religious training and belief,* is conscientiously opposed to participation in war in any form. *Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.* * * *" (Italics supplied)

Section 5(g) of the Selective Training and Service Act of 1940 (54 Stat. 885, 889), provided:

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

In enacting Section 6(j) of the Selective Service Act of 1948 (62 Stat. 604, 612-3), which is identical with §6(j) of said 1951 Act here under discussion, Congress substituted "armed forces" for "land or naval forces" in the above quotation from the 1940 Act, and added thereto the following amendment:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological or philosophical views or a merely personal moral code."

Section 6(j), inherently, and as applied to deny respondent an exemption, is violative of both the "Establishment Clause" and the "Free Exercise Clause" of the First Amendment.

By this amendment, Congress restricted prior definitions and concepts of "religious training and belief" to *only* a "belief in a relation to a Supreme Being".[1]

Congress thus created a preference and an aid in favor of conscientious objectors whose conscientious objection is related to, or based upon, a belief in a Supreme Being, as against those conscientious objectors whose conscientious objection is related to, or based upon, some other type of religious training and belief.

Congress, thus, has passed a law and has imposed a requirement which aid those religions based on a belief in the existence of "a Supreme Being" or "one God", as against those religions founded on different beliefs, and has preferred one type of religion over another and religions as against non-believers. It has abandoned the "neutral" position in respect of religions placed on government by the First Amendment.

As noted above, respondent was refused exemption as a conscientious objector, under said law, solely because his religious training and belief, from which his conscientious objection arises, was not, affirmatively, a belief in a relation to a Supreme Being (R. 9, 20-24, 30). Concededly, his conscientious objection arises from religious training and belief, though not one related to belief in a Supreme Being. He is not a "non-religious objector". There is no finding or suggestion in the proceedings below that his conscientious objection was based on essentially political, sociological or philosophical views or merely personal code or anything else but religion. (Cf. Gov. Br. pp. 10-12, 17, 22-3, 35-6, 75-8.)

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1. No prior federal draft act has contained such a "Supreme Being" provision. See 1863 Civil War Draft Act, 12 Stat. 731 (1863), as amended in 1864, 12 Stat. 733; Selective Draft Act of 1917, 40 Stat. 76 (1917); Selective Training and Service Act of 1940, 54 Stat. 885 (1940). (See Point V, infra).

(a) As to the "Establishment Clause"

Such statute is clearly unconstitutional under the "Establishment Clause" of the First Amendment and the recent decisions of this Court.

In *Torcaso* v. *Watkins,* 367 U. S. 488 (1961), this Court stated, at page 495:

> "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs. (11)"

In the cited footnote, this Court stated:

> "(11) Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others. See *Washington Ethical Society* v. *District of Columbia,* 249 F. 2d 127; *Fellowship of Humanity* v. *County of Alameda,* 153 C.A. 2d 673, 315 P. 2d 394; II Encyclopedia of the Social Sciences 293; 4 Encyclopedia Britannica (1957 ed.) 325-327; 21 id., 797; Archer, Faiths Men Live by (2d ed. revised by Purinton), 120-138, 254-313; 1961 World Almanac 695, 712; Year Book of American Churches for 1961, at 29, 47."

In that case, Maryland had denied Torcaso a commission as a notary public because he would not declare his belief in God, as required under the State constitution. This Court held that that State law violated the "Establishment Clause" of the First Amendment. The language quoted above from *Torcaso* was reiterated and reaffirmed

in *Abington School District* v. *Schempp*, 374 U. S. 203, 220 (1963).

These constitutional principles were anticipated and stated by this Court in several of its earlier decisions preceding *Torcaso* and have been reaffirmed in several of its subsequent decisions.

In *Everson* v. *Board of Education*, 330 U. S. 1 (1947) this Court stated:

> "'The establishment of religion clause of the First Amendment means at least this: Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. * * * In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State'."

In *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, 210-11 (1948) this Court was requested and specifically refused to repudiate as "dicta" the above-quoted *Everson* interpretation of the scope of the First Amendment's coverage and reiterated the *Everson* statement as to the meaning of the establishment of religion clause. See, also, *Zorach* v. *Clauson*, 343 U. S. 306, 312, 314-5 (1952), which followed the *McCollum* case. Said *Everson* statement was again reaffirmed in the *Torcaso* case, *supra*, in *McGowan* v. *Maryland*, 366 U. S. 420 (1961), in *Engel* v. *Vitale*, 370 U. S. 421 (1962) and in *Abington School District* v. *Schempp*, 374 U. S. 203 (1963). These principles are now "universally recognized", said this Court in *Schempp* (at page 220).

In a recent commentary on "Conscientious Objector Provisions: A View In The Light Of *Torcaso* v. *Watkins*" (Vol. 51 The Georgetown Law Journal, 252), the law professor, Conklin, says (at pages 252, 254):

> "The sweeping language utilized in *Torcaso* all but explicitly rules the 'belief in a Supreme Being' clause of the 1948 Selective Service Act unconstitutional * * * in reaching its decision the Court had to repudiate the definitions of religion given in a whole series of previously decided cases."*

and further (at page 276):

> "It is now evident that the line of reasoning followed by Judge Hand in *Kauten* has been adopted by the Supreme Court as the current interpretation of the meaning of the word 'religion' in the first amendment. In *Torcaso* v. *Watkins* the Supreme Court, in holding that the Maryland religious test for public office which required a declaration of belief in the existence of God was an unconstitutional invasion of appellant's freedom of belief and religion, all but explicitly declared that the 'Supreme Being Clause' of the Selective Service Act is now unconstitutional. The opinion of the Court, authored by Mr. Justice Black, clearly demonstrates that the 'Supreme Being Clause' is repugnant to the first amendment since it aids 'all religions as against non-believers,' and aids some 'religions based on a belief in the existence of God as against those religions found on different beliefs.'"

In *Cantwell* v. *Connecticut*, 310 U. S. 296, 303-4 (1940), decided under the "Free Exercise Clause", the Court stated:

> "The First Amendment declares that Congress shall make no law respecting an establishment of religion

* *E.g., United States* v. *Macintosh*, 283 U. S. 605 (1931); *Church of the Holy Trinity* v. *United States*, 143 U. S. 457 (1892); *Davis* v. *Beason*, 133 U. S. 333 (1890).

or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. * * * Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion."

In *Engel, supra,* the Court stated (at pp. 430-432):

"The Establishment Clause, unlike the Free Exercise Clause does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. * * * The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate." (Italics added)

In *Schempp, supra,* this Court again reviewed its prior decisions in this field and reaffirmed the above noted principles of law established therein. It not only reiterated the above language from *Torcaso* (at p. 220) and the above quotation from *Engel* (at pp. 221-2), but stated further (at p. 226) as follows:

> "In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment."

And elsewhere in that opinion (at pp. 215-6) it reviewed the prior cases and reaffirmed "this *'neutral'* position in which the Establishment and Free Exercise Clauses of the First Amendment place our Government"; and asserted that "all religious opinions and sects" have "absolute equality before the law"; and, "The Government is neutral, and while protecting all, it prefers none, and it disparages none".

This Court has repeatedly and variously expressed the constitutional principles that the Government must be completely neutral as between religions, cannot discriminate between religions, cannot prefer one religion over another or select any one group or any one type of religion for preferred treatment, cannot prescribe what shall be orthodox in religion, and cannot pass laws which aid one religion or all religions. *Everson* v. *Board of Education,* 330 U. S. 1 (1947); *Illinois ex rel. McCollum* v. *Board of Education,* 333 U. S. 203, 210 (1948); *Zorach* v. *Clauson,* 343 U. S. 306, 317, 319 (1952); *Torcaso* v. *Watkins,* 367 U. S. 488, 492, 495 (1961); *McGowan* v. *Maryland,* 366 U. S. 420 (1961); *Abington School Dist.* v. *Schempp,* 374 U. S. 203, 214 (1963); *Sherbert* v. *Verner,* 374 U. S. 398, 404, 409 (1963); *Cantwell* v. *Connecticut,*

310 U. S. 296 (1940); *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943); *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, 642 (1943); *United States* v. *Ballard*, 322 U. S. 78, 86 (1944); and *Fowler* v. *Rhode Island*, 345 U. S. 67, 69 (1953).

This Court said in *United States* v. *Ballard, supra* (at p. 86):

> "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. * * * Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. Board of Education *v.* Barnette, 319 U. S. 624. It embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. * * * The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence and disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting view. Man's relation to his God was made no concern of the state. * * * The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. Murdock *v.* Pennsylvania, 319 U. S. 105." (Emphasis supplied.)

By enacting Section 6(j), Congress has in effect, established as an official religion—a religion that is related to a belief in a Supreme Being—and it has placed the support of the Government behind this particular religious belief;

and it has caused the Government to prefer and to align itself with that particular form of religion; it has abandoned and violated the "neutral" position, constitutionally imposed on the Government; and it has established by legislative fiat the religious orthodoxy of the "Supreme Being" religious belief. It has made man's religious relation to God or a Supreme Being the concern of the state.

This, it is submitted, constitutes a clear violation of the "Establishment Clause" of the First Amendment.

(b) As to the "Free Exercise Clause"

Section 6(j) also violates the "Free Exercise Clause", in relation to respondent.

The "Free Exercise Clause" and the "Establishment Clause" forbid two quite different kinds of governmental encroachment upon religious freedom, though they may overlap, as here. *Abington School District* v. *Schempp*, 374 U. S. 203, 221 (1963); *Engel* v. *Vitale*, 370 U. S. 421, 430 (1962).

It may be, as the Government states (Gov. Br. pp. 20, 33) that this statute protects, in the free exercise of their religion, those conscientious objectors whose religion is based on belief in a "Supreme Being", because it permits them to avoid a course of conduct which their religion condemns.*

The Government's argument is that Congress is simply endeavoring to give the greatest possible latitude to the free exercise of religion when it enacted this conscientious objector provision. It is probably true, historically, that one reason for granting exemption from military service to religious conscientious objectors was to recognize rights

* This, of course, is an indirect recognition that it would constitute a prohibition of the free exercise of religion for Congress to make a law which denies such an exemption to *any* religious conscientious objector, whether or not he believes in a Supreme Being.

of conscience; probably another reason was the recognition, from experience, that to force a sincere conscientious objector to participate in war was doomed to fail (Cf. Gov. Br., p. 43).

But this does not allow for the "free exercise" of *their* religion by conscientious objectors, like respondent, whose religion is not related to a "Supreme Being" belief (nor for any "free exercise" rights to non-religious conscientious objectors), however sincerely they may oppose military service.

Therefore, so far as respondent is concerned, the statute is a law prohibiting the "free exercise" of his religion.

As pointed out by the Second Circuit Court of Appeals in *United States* v. *Jakobson*, 325 F. 2d 409, 415; (Jakobson Record, p. 35), a statute that protects the "free exercise" of only a few favored religions or prefers some religions over others, violates the First Amendment. As that Court there said:

> "The freedom which the Constitution protects is the freedom to exercise the religion of one's choice; a statute limited to certain religions would restrict the free exercise of the disfavored ones."

To the same effect is that Court's opinion in this case (R. p. 35).

As this Court has said:

> "The Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to *anyone* • • •" *Schempp, supra,* at p. 226.

This includes persons of non-theistic beliefs.

The Free Exercise Clause "withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by protecting any invasions thereof by civil authority." *Schempp, supra,* at pp. 222-3.

The coercive effect of Section 6(j), as it operates against respondent in the practice of his religion, is quite apparent. When the power and prestige of the Government is placed behind a particular religious belief—here a religious belief related to a "Supreme Being"— there is an indirect coercive pressure upon draft registrants of religious minorities to conform to the prevailing officially approved religion in order to obtain exemption as a conscientious objector. *Schempp, supra,* at pp. 221-3.

The disqualification of respondent for exemption benefits would impose a burden on the "free exercise" of his religion.

The fact that Seeger is not compelled to request an exemption is no excuse for barring him from exemption by state imposed criteria forbidden by the Constitution. *Torcaso, supra,* at pp. 495-6.

Concededly, his declared ineligibility for exemption is derived solely from the practice of his religion and the pressure upon one in his position to forego that practice is inevitable.

The ruling of the Draft Board forced him to choose between following the precepts of his religion and forfeiting the exemption benefit and inviting and facing imprisonment, on the one hand, and abandoning one of the precepts of his religion in order to obtain exemption status, on the other hand.

Governmental imposition of such a choice puts a substantial burden on the free exercise of religion. *Sherbert v. Verner*, 374 U. S. 398, 403-4.

In *Sherbert*, this Court held it to be a violation of the Free Exercise Clause for a state to disqualify a person from benefits of an unemployment compensation act because her unemployment flowed from her conscientious scruples against working on a Saturday as a member of the Seventh Day Adventist Church. This, the Court said, imposed a "burden on the free exercise of appellant's

religion"; and that this was so even if the consequences of such disqualification to religious principles and practices may be only an indirect result of welfare legislation within the State's general competency to enact, rather than a direct compulsion resulting from criminal sanctions.

In Seeger's case, confronted as he was with possible imprisonment, the compulsion was more direct than in *Sherbert*.

While the District Court sentenced respondent to be punished directly because of his failure to submit to induction (R. 14-15, 24-5), his punishment, indirectly, flowed from his religious beliefs. His failure to submit to induction, his indictment, his conviction and his jail sentence stemmed directly from the denial to him of an exemption because of the particular nature of his religious training and belief.

In *Sherbert, supra*, this Court, quoting from *Braunfeld* v. *Brown*, 366 U. S. 599, 607 (1961), stated in relation to the "free exercise" point:

> "For [i]f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect."

Section 6(j) certainly discriminates invidiously between religions.

Respondent, by invoking his conscientious belief, was not committing an act which was in violation of any criminal statute, as in the cases of *Davis* v. *Beason*, 133 U. S. 333 (1890); *Reynolds* v. *United States*, 98 U. S. 145 (1878); *Cleveland* v. *United States*, 329 U. S. 14 (1946); *Prince* v. *Massachusetts*, 321 U. S. 158 (1944).

Nor could it be said that his act is not an expression of an honest and legitimate religious concern, impulse and principle. The Quakers and other religious groups long have had tenets against participation in war activities;

and the Founder of Christianity is said in the Bible to have been heralded into this world with the words: "Glory to God in the highest, and on earth peace, good will toward men", and to have expressed pacifist teachings and blessed peacemakers in his Sermon on the Mount.

Nor does the freedom asserted by respondent bring him into collision with rights asserted by other individuals. His right or privilege of exemption based on his religious beliefs is personal to him.

Nor does the exercise of his conscientious religious objection conflict with the public interest—because the statute, in so far as it provides exemptions to conscientious objectors and particularly to those having a "Supreme Being" belief, was presumably enacted in the public interest. There is no "public interest" or governmental imperative that requires a distinction in exemptions between theistic and non-theistic religious objectors.

Elsewhere herein (see Point III), it is pointed out that the free exercise of religion cannot be denied because draft exemption may be a "privilege" instead of a right, for the reason that even a privilege of exemption must be available to all on a non-discriminatory basis; and that to deny such a privilege because of kind of religious belief is to penalize that belief and the person affected.

Government may neither compel affirmation of a repugnant belief nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities. *Sherbert, supra,* at p. 402.

In *Hamilton* v. *Regents,* 293 U. S. 245 (1934) the Court held that the "liberty" guaranteed by the Fourteenth Amendment did not confer upon conscientious religious objectors to war and military training, the right to attend a state university without taking a military science course required by the State of all male students. It pointed out that the State had "not drafted or called them to attend the university".

In *West Virginia Board of Education* v. *Barnette,* 319 U. S. 624 (1943); overruling *Minersville School District* v. *Gobitis,* 310 U. S. 586 (1940), this Court held it to be a violation of a public school child's free exercise of her religion under the First Amendment to compel her to participate in a "flag salute" exercise against her religious conscientious objection, even though it was claimed that such exercise was in the interest of "national unity". The Court said this was not a "permissible means" to achieve national unity, but, rather, transcended constitutional limitations; and that governmental officials could not prescribe what should be orthodox in religion.

It may be assumed, for present purposes, that the current, peacetime Draft Act has a legitimate secular, governmental goal and purpose; but in achieving that secular goal and purpose Congress cannot grant exemptions therefrom to conscientious objectors on a basis which discriminates between religions related to one "Supreme Being" and religions not so related.

The question whether the Government must grant draft exemptions to *anyone* (religious or non-religious conscientious objectors), is not involved here. Having granted draft exemptions, Congress may not discriminate between religious conscientious objectors believing in a "Supreme Being" and conscientious objectors not so believing.

Nor, is there any compelling necessity for the Government to so discriminate. The exemption of all convinced religious objectors, without regard to the nature of their religious belief, would not frustrate the purposes of the draft. In fact, the Draft Act of 1940, which granted the exemptions based solely on a "religious training and belief", did exactly that and effectively acheived its purpose. Moreover, it might be argued convincingly that the exemption of all sincere conscientious objectors would not frustrate the purpose of the draft. For a number of

years, Great Britain has had a draft act that does exempt *all* conscientious objectors, and every indication is that it has acheived its primary purpose of raising an army. "The Statutes Revised" (3rd Ed., 1948), Vol. XXXI, p. 471; 11 and 12 Geo. 6 c. 64, Sections 17, 18, 19. Similar draft acts exist in Canada, Australia, New Zealand, Sweden, Denmark, Finland, Norway and Federal Republic of Germany; and in The Netherlands religious *or* moral concientious objectors are exempt.

Moreover, there is no real reason to believe that the exemption of all sincere religious conscientious objectors or of all sincere conscientious objectors would not be just as workable as the present "Supreme Being" test. The Selective Service authorities had no difficulty in determining the sincerity of Seeger, even though he did not assert a positive belief in a "Supreme Being".

It is certainly no more difficult for the draft authorities to determine whether or not a registrant has a sincere "religious belief" than to determine whether or not a registrant believes in "a Supreme Being", as the records in the companion *Peter* and *Jakobson* cases attest. (Nos. 29, 51, this term.)

Moreover, it is indeed questionable, in light of the history of religions, that in respect of matters of conscience there are any fewer frauds and hypocrites among adherents to theistic religions than among adherents to non-theistic religions, or among those professing religious beliefs than among those professing moral, philosophical, political, ethical or sociological beliefs (Cf. Jackson, J., dissenting opinion, *United States* v. *Ballard,* 322 U. S. 78, 92-5 (1944)).

There is certainly no more propriety in distinguishing between religious beliefs which are solely the result of individual reading, reflection and training and those which the believer assumes to be the product of divine commands; or between internally derived and externally

compelled beliefs; or between the "voice" of conscience and the "voice" of an unidentified and unidentifiable supernatural deity. (R. 35, 37; Cf. dissenting opinion in Berman, *infra*, pp. 49-50).

As the Court of Appeals herein said (R. 37):

> "The government has argued that the 'Supreme Being' standard may be justified as implifying the task of the draft boards by providing an objective standard for the determination of sincerity and religious belief. In light of *Jakobson's* expanded definition of 'Supreme Being', the test would hardly be free from complexities. In any event, 'government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that nonreligious means will not suffice.' *School District of Abington Township* v. *Schempp*, 374 U. S. 203, 265 (1963) (concurring opinion of Brennan, J.)"

It is submitted that Section 6(j), inherently and as applied, also constitutes, as to Seeger, a clear violation of the "Free Exercise Clause" of the First Amendment.

POINT II

The "Supreme Being" provision of Section 6(j) also violates the due process clause of the Fifth Amendment of the Federal Constitution.

Under the Fifth Amendment, Congress cannot deprive a person of life, liberty or property without due process of law.

The classifications set up in Section 6(j) are arbitrary and discriminatory in that they permit the exemption from military service of a person whose religious training and belief is related to a Supreme Being, but deny such exemption to persons whose religious training and belief is not related to a Supreme Being.

Such a classification violates the First Amendment, as noted. It also constitutes a denial of substantive due process and violates the due process clause of the Fifth Amendment.

The Court of Appeals, in properly holding "the Supreme Being" requirement to create an "impermissible classification" stated:

> "* * * we cannot conclude that specific religious concepts, even if shared by the overwhelming majority of the country's organized religions, may be selected so as to discriminate against the holders of equally sincere religious beliefs. Especially when considered in the light of *Torcaso* and the still more recent teachings of the Supreme Court, a line such as is drawn by the 'Supreme Being' requirement between different forms of religious expression cannot be permitted to stand consistently with the due process clause of the Fifth Amendment. We are convinced that the believer in a Supreme Being is not for that reason alone more entitled to have his conscience respected by a draft board than is Daniel Seeger." (R. 38)

While the Fifth Amendment contains no "equal protection" clause, as does the Fourteenth Amendment, the "due process of law" clause of the Fifth embodies the concept of "equal protection of the laws". These two concepts both stem from our American ideal of fairness and are not mutually exclusive. The "equal protection of the laws" is merely a more explicit safeguard of prohibiting unfairness than "due process of law". Discrimination may be so unjustifiable as to be violative of due process. See *Bolling* v. *Sharpe,* 347 U. S. 497, 499 (1954).

In the *Bolling* case, which involved Congressional legislation, this Court stated:

> "Classifications based solely upon race must be scrutinized with particular care, since they are

contrary to our traditions and hence constitutionally suspect."

This Court said such classifications constituted a denial of due process of law under the First Amendment which includes the concept of equal protection of the laws.

It is equally clear that classifications based solely upon religion, or types of religion, are constitutionally suspect and prohibited.

The "Supreme Being" provision in Section 6(j), *per se* and as applied to deny an exemption, is an unjustifiable religious discrimination under the First Amendment and; therefore, inherently and as applied to deny Seeger an exemption, constitutes as to him a denial of equal protection of the laws and due process of law under the Fifth Amendment.

The test of legislation which collides with the Fifth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fifth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. Cf. *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, 639 (1943).

In setting up, in Section 6(j), a classification based solely upon different types of religion, Congress has entered into a forbidden field of legislation; and, in relation to the prohibitions of the First Amendment, its classification is arbitrary and discriminatory.

Even if it were to be assumed that a statutory classification which draws a line between religious objectors and non-religious objectors would be a reasonable and justifiable discrimination, that is no answer to the point that a statutory exemption classification which discriminates between types of religion is arbitrary and unjustifiably discriminatory in violation of the First and Fifth Amendments.

POINT III

That the exemption benefit granted under Section 6(j) may represent merely a "privilege" and not a "right" does not save this statute from constitutional infirmity.

The District Court stated, in convicting respondent (R. 22-4), that Congress, under its power "to raise and support Armies" (U. S. Const., Art. 1, Sec. 8, Cl. 12) has an unchallengeable right to grant or withhold exemption from military service as it sees fit and to define the categories of those who may be exempted; that a conscientious objector has no constitutional right to such exemption and may be compelled to serve in the military against his will and without regard to his religious convictions; and that such exemption is a matter of legislative grace or privilege which comes not from the Constitution but from acts of Congress. Cited for these propositions are various cases, including *Hamilton* v. *Regents,* 393 U. S. 245, 263-4 (1934); *United States* v. *Macintosh,* 283 U. S. 605, 622-4 (1931), overruled by *Girouard* v. *United States,* 328 U. S. 61, 69 (1946); *Selective Draft Law Cases,* 245 U. S. 366 (1918); *Jacobson* v. *Massachusetts,* 197 U. S. 11, 29 (1905).

But, as the Court of Appeals, in reversing the District Court, said, it is "unnecessary to determine whether an exemption for some or all conscientious objectors is a constitutional necessity, or is merely dependent upon the will of Congress" (R. 33).

It is not even necessary here to determine whether Congress, constitutionally, can grant exemptions to religious conscientious objectors while denying exemptions to non-religious conscientious objectors.

The question here is whether Congress can favor theistic over non-theistic conscientious objectors, in granting exemptions.*

Even if exemption is a matter of grace, Congress may not grant or deny the privilege of exemption on a basis which is discriminatory under the First and Fifth Amendments.

To deny a registrant or citizen exemption because of his religious belief, or the nature of such belief (in relation to a Supreme Being, for instance), is, in effect, to penalize him for such belief and to penalize that belief, and this is so, even if an exemption is considered a "privilege" or a "matter of grace". *Speiser* v. *Randall*, 357 U. S. 513, 518-9, 536 (1958); *First Unitarian Church* v. *Los Angeles*, 357 U. S. 545, 546-7 (1958); *Sherbert* v. *Verner*, 374 U. S. 398, 404-5 (1963).

As the Court of Appeals said (R. 33):

> "* * * it now seems well-established that legislative power to deny a particular privilege altogether does not imply an equivalent power to grant such a privilege on unconstitutional conditions. See *Speiser* v. *Randall*, 357 U. S. 513 (1958). It could hardly be argued, for example, that the ability of Congress to deny an exemption to all conscientious objectors would permit Congress to limit that exemption to objectors of one particular religious denomination."

As this Court said in *Sherbert*, *supra*, at pages 404-5:

> "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." (Cases cited.)

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* Several recent law journal "comments" have questioned the constitutionality of Section 6(j) not only because it discriminates between theistic and non-theistic conscientious objectors but, also, it discriminates between religious and non-religious conscientious objectors, regardless of their sincerity and good faith. 50 Va. L. Rev. 178, 182-3; 64 Col. L. Rev. (No. 5), 938, 948, 950 (1964); 48 Minnesota L. Rev. 770-71, 775-78 (1964).

In *Speiser, supra,* this Court pointed out that even though a tax exemption is a "privilege" or "bounty", its denial may infringe speech; and emphasized that the imposition of conditions upon public benefits, even a gratuitous benefit, cannot be sustained if they operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms. See *Sherbert, supra,* at p. 398.

So, here, even assuming exemption of a conscientious objector from military service is merely a "privilege", "grace" or "bounty" solely dependent upon the will of Congress, it does not follow that the granting or denial of such privilege may be effected under conditions or classifications which constitute a denial of constitutional rights under the First or Fifth Amendments. That is what Congress has done here.

The fact that Seeger is not compelled to believe or disbelieve in a Supreme Being, under compulsion, or is not compelled, except by conscience, to request exemption from military service, cannot possibly be an excuse for barring him from such exemption benefits by government imposed criteria forbidden by the Constitution. *Torcaso* v. *Watkins,* 367 U. S. 488, 495-6 (1961).

Here, Seeger, if his conviction and sentence were not reversed, would be discriminated against, penalized, punished and imprisoned because of his religious beliefs—by being denied the exemption because his religious belief is not related to a Supreme Being.

POINT IV

The "religion clauses" of the First Amendment are applicable to all kinds of religion—religions related to a belief in a Supreme Being and religions of other beliefs—and include respondent's religion.

It is conceded that respondent's conscientious objection is sincere and religious, though not related to a Supreme Being belief, and would come within the definition of "religion" in *Kauten* and the "religious training and belief" provision of the 1940 Draft Act.

The government, in order to justify the present "Supreme Being" statute, seeks to engraft on the "religion clauses" of the First Amendment a "Supreme Being" religious belief. Manifestly, the First Amendment cannot be so circumscribed. It includes and is applicable to all kinds of religion, whether or not related to a Supreme Being belief.

The Federal Constitution contains no reference to a "Supreme Being" or to "God" or to any other divinity.

The term "religion" is used only twice in the Federal Constitution—in the First Amendment and in Article VI, Clause 3. "Religion" is not defined in the Constitution. Nor is it confined in any degree or respect as to nature, scope, meaning or application.

It was intended to have a broad and comprehensive meaning.

The Framers of the Constitution, in Article VI, Clause 3, chose, deliberately, to make non-believers, as well as believers and disbelievers, eligible to any office or public trust under the United States, including President. They did so in face of efforts in the Constitutional Convention to require a belief in the existence of a Deity. (David Hutchison, The Foundation of the Constitution, pp. 280-

281; Torpey, Judicial Doctrines of Religious Rights in America (1948), p: 18-19; Stokes, Church and State in the United States, Vol. 1, p. 521-8, 532-6) and at a time when most of the states legally required religious qualifications for public office, as they had earlier as colonies.*

No one would seriously suggest that this "religious test" provision means that only those having a belief in a Supreme Being are really eligible for public office and yet, the Government argues that the "one Supreme Being" test should be read into the "religion" of the First Amendment. (See, also, *infra*, pp. 69-70.)

Several of the earlier decisions of this Court contain statements which, under its later decisions could not be considered as constitutionally sound as restricting the Constitutional concept of religion. In *Church of the Holy Trinity* v. *United States*, 143 U. S. 226, 457, 470-1, it was stated "we are a Christian people" and "this is a Christian nation". In *Davis* v. *Beason*, 133 U. S. 333, 342 (1890), it was said: "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will."

In *United States* v. *Macintosh*, 283 U. S. 605, 625 (1931), (overruled in *Girouard* v. *United States*, 328 U. S. 61 (1946) reappeared the concept, "we are a Christian people", and in the dissenting opinion therein Chief Justice Hughes, apparently relying on the *Beason* statement, said, (at page 633-4):

> "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relations. * * * One cannot speak of

* Six states required a belief in Protestantism, two in Christianity; four, in the divine inspiration of the Bible; one, in the Doctrine of the Trinity; two, in "one Supreme Being." Cobb, The Rise of Religious Liberty in America, p. 501; Torpey, Judicial Doctrines of Religious Rights in America, p. 16.

religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God."

These earlier judicial utterances cannot restrict or limit the correct Constitutional concept of religion. One commentator recently pointed out that in reaching its decision in *Torcaso* the Court had repudiated the definitions of religion given in these prior cases. (See Conklin, supra, at p. 24, Vol. 51 The Georgetown Law Journal, 252, 254).

This Court has repeatedly said in its more recent decisions that the "religion clauses" of the First Amendment must be given a broad and comprehensive meaning and application. There is no need to review and repeat here the variety of statements in which this principle has been expressed in those cases, except to say that in no instance has there been any expression which would limit the Constitutional religious concept to a belief in a Supreme Being. See the following: *Everson* v. *Board of Education*, 330 U. S. 1, 14-15 and Rutledge, J. dissenting opinion at pp. 31-33 (1947); *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203 (1948); *McGowan* v. *Maryland*, 366 U. S. 420 (1961); *Torcaso* v. *Watkins*, 367 U. S. 488 (1961); *Abington School District* v. *Schempp*, 374 U. S. 203 (1963); *Engel* v. *Vitale*, 370 U. S. 421 (1962); *Sherbert* v. *Verner*, 374 U. S. 398 (1963); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943); *West Virginia* v. *Barnette*, 319 U. S. 624 (1943); *Fowler* v. *Rhode Island*, 345 U. S. 67 (1953); *United States* v. *Ballard*, 322 U. S. 78 (1944); *Follett* v. *McCormick*, 321 U. S. 573 (1944).

Mr. Justice Frankfurter stated in *McGowan*, supra (at p. 461):

> "By its nature, religion—in the comprehensive sense in which the Constitution uses that word—is an aspect of human thought and action which profoundly relates the life of man to the world in which he lives."

and in his dissenting opinion in the *Barnette* case, *supra,* (at page 658) he stated:

> "When dealing with religious scruples we are dealing with an almost numberless variety of doctrines and beliefs entertained with equal sincerity by the particular groups for which they satisfy man's needs in his relation to the mysteries of the universe. There are in the United States more than 250 distinctive established religious denominations."

and in *Barnette* at page 658, as in *Saia* v. *New York,* 334 U. S. 558, 564 (1948), he referred to the "allowable range of judgment regarding the scope of religion" and mentioned in this connection Judge Augustus Hand's definition in *Kauten.*

Today, this nation is far more heterogeneous religiously than it was when the Constitution was framed. The addition of Hawaii and Alaska to the United States, alone, has added many adherents of Oriental and primitive religions. Today's interpretation of the First Amendment must be responsive to the nature of religious questions in contemporary society. (Brennan, J. concurring, *Schempp* case, *supra,* at p. 241.)

This Court has repeatedly referred to the writings of Jefferson and Madison to throw illumination on the meaning of the First Amendment. (e.g., *McGowan,* at pp. 437-8; *Everson,* at pp. 11-14.) In his "Memorial and Remonstrance" (see Appendix to dissenting opinion in *Everson* v. *Board of Education,* 330 U. S. 1, 64, 66), Madison stated, among other things:

> "The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. * * * We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. * * * Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us."

Madison co-authored in 1776 Virginia's "Declaration of Rights" which provided, inter alia, that "all men are equally entitled to the freedom of religion, according to the dictates of conscience * * *" (9 Hening's Statutes of Virginia 109, 111-12; McGowan, supra, p. 438).

In Jefferson's "Virginia Statute for Religious Freedom" (12 Hening, Statutes of Virginia (1823), 84-6) it was stated in the Preamble:

> "* * * that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; * * * that our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry; * * * that it is time enough for the rightful purposes of civil government, for its offices to interfere when principles break out into overt acts against peace and good order;

and it was enacted:

> "That no man shall be compelled to frequent or support any religious worship, place, or ministry

> whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in nowise diminish, enlarge, or affect their civil capacities."

Jefferson, in his "Notes on Virginia" wrote:

> "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God." (*Padover*, "The Complete Jefferson", p. 675)

In his "Notes on Religion", Jefferson stated:

> "The life and essence of religion consists in the internal persuasion or belief of the mind." (*Padover, supra*, p. 944)

Later therein, quoting from Locke, he said, "neither Pagan nor Mohammedan nor Jew ought to be excluded from the civil rights of the Commonwealth because of his religion." (*Padover, supra*, p. 945)

In his letter to Benjamin Rush in April, 1803, he wrote:

> "My views * * * are the result of a life of inquiry and reflection * * * I am a Christian in the only sense in which I believe Jesus intended anyone to be, sincerely attached to his doctrines in preference to all others; ascribing to himself every human excellence, and believing that he never claimed any other." (*Foote*, "The Religion of Thomas Jefferson" (1947, 1960) at p. 4)*

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* The Jefferson Bible is surely a "religious" book, but in compiling it Jefferson collected only the sayings of Jesus and eliminated the miraculous passages concerning him. He entitled it "The Philosophy of Jesus" or "The Life and Morals of Jesus". (See *Foote, supra*, at pp. 61-7 and any edition of the Jefferson Bible.)

In a letter to his nephew Peter Carr, he gave this advice:

> "Your reason is now mature enough to examine religion * * * Shake off all the fears and servile prejudices, under which weak minds are servilely crouched. Fix reason firmly in the seat, and call to her tribunal every fact, every opinion. Question with boldness even the existence of God, because if there be one, he must more approve of the homage of reason than that of blindfold fear * * *. Your own reason is the only oracle given you by heaven, and you are answerable not for the rightness, but the uprightness of the decision." (*Foote, supra,* at pp. 77-8)

As pointed out in *Torcaso,* among the religions in this country which do not teach what would generally be considered a belief in the existence of God or a Supreme Being are Buddhism, Taoism, Ethical Culture and Secular Humanism. Cf. *Washington Ethical Society* v. *District of Columbia,* 101 U. S. App. D. C. 371, 249 F. 2d 127; *Fellowship of Humanity* v. *County of Alameda,* 153 Cal. App. 2d 673, 315 P. 2d 394. See, also, Prof. Cahn's recent article on "Government and Prayer", New York University Law Review, Vol. 37, No. 6, pp. 981, 993-4 (Dec. 1962) where reference is made not only to various non-theistic religions but, also, to various polytheistic, pantheistic and ethical religions.

In *United States* v. *Kauten,* 133 F. 2d. 703 (2 Cir. 1943), the Court affirmed the registrant's conviction, for failing to report for induction, under the Selective Training and Service Act of 1940 (50 U.S.C.A. App. § 305(g)) on the ground that registrant's conscientious objection was not predicated on a religious training and belief but, rather, on his philosophical and political convictions. The Court, through Judge Augustus N. Hand, stated:

"It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to his universe—a sense common to men in the most primitive and in the most highly civilized societies. It accepts the aid of logic but refuses to be limited by it. It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets. A religious obligation forbade Socrates, even in order to escape condemnation, to entreat his judges to acquit him, because he believed that it was their sworn duty to decide questions without favor to anyone and only according to law. * * * Recognition of this obligation moved the Greek poet Menander to write almost twenty-four hundred years ago: 'Conscience is a God to all mortal'; impelled Socrates to obey the voice of his 'Daimon' and led Wordsworth to characterize 'Duty' as the 'Stern Daughter of the Voice of God.'

"There is a distinction between a course of reasoning resulting in a conviction that a particular war is inexpedient or disastrous and a conscientious objection to participation in any war under any circumstances. The latter, and not the former, may be the basis of exemption under the Act. The former is usually a political objection, while the latter, we think, may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse."

This concept was followed, and this definition of religion was reiterated, in *United States ex rel. Reel* v. *Badt*, 141 F. 2d 845 (2 Cir., 1944) where the same Court, through

Judge Augustus N. Hand, held that it was error for a registrant to be denied exemption as a conscientious objector because his conscience was not related to a Deity or supernatural power; and in *United States ex rel. Phillips* v. *Downer*, 135 F. 2d 521 (2 Cir., 1943) where, again, the same Court, through Judge Clark, held that the Hearing Officer under the Selective Service Act of 1940 had erroneously denied the benefits of the exemption to a registrant whose religious training and beliefs were not related to a Supreme Being or to a particular religious sect or denomination.

A different conclusion was reached in *Berman* v. *United States*, 156 F. 2d 377 (9 Cir., 1946), cert. den. 329 U. S. 795 (1946), where the registrant's objection was based entirely upon a philosophical, social or political policy and not upon a religious belief; but, where the Court, by way of *dictum*, held that the words "religious training and belief" in Section 5(g) of the Selective Training and Service Act of 1940 (50 U.S.C.A. App., 2d § 305(g)) and the word "religion" in the First Amendment meant a religion related to a belief in God.

Time and later decisions have shown the validity of the views stated in the dissenting opinion in *Berman*, including the following (at pp. 383-4):

> "It is my opinion that Congress would have regarded it by 'religious training and belief' if Abraham Lincoln had never attended any religious service but had so trained his mind from intensive study before the fire in his log cabin of the Bible, Aesop's Fables, and Pilgrim's Progress, that he acquired a religious belief. Nor that it was not religious if he believed he lived in a world in which men, by a quality of their spirits not controlled by material things—that is in a supernatural world of spiritual beings—owe a moral duty to other men, also morally free, not to destroy the bodies in which their

spirits are enfleshed. In my opinion, Congress did not think it necessary for his religious training and belief that Lincoln should have trained himself or have been trained by concentration of his mind on the discourse of a clergyman in the course of attendance of services of the protestant church of which he became a member.

• • •

"It is true that there is no evidence that Berman's religious conviction that he should not kill his fellow man flowed from the command of some god or gods of one or another of the world's many religious congregations, and we may assume that such was not its source. But many of the great religious faiths with hundreds of millions of followers have no god.

• • •

"This recognition of religion as not requiring a god is excellently stated in Judge Augustus Hand's opinion in United States *v.* Kauten, 2 Cir., 133 F. 2d 703, 708.

"Even the dictionary definitions recognize that religion need have no god.

• • •

"Here we have Berman's uncontradicted statement that his 'conscientious' objection is the result of his religious belief. 'Conscience' is not derived from a materialistic concept of the origin of human beings.

• • •

"The power of conscience postulates a supernatural spirit. Only by the spirit's superiority and control over the demands of surrounding nature, can man be conscientious. Only by supernatural power does man's *will* overcome his animal desire to kill or destroy."

The commentary in Vol. 51 The Georgetown Law Journal, 252 quoted above, at page 24 states that the line of reasoning followed by Judge Hand in ***Kauten*** had been

adopted by this Court as the current interpretation of the meaning of the word religion in the First Amendment.

As the Court of Appeals herein said (R. 36), "the decision in *Kauten* was the precursor of *Torcaso*", for in *Kauten's* broad definition was embraced the recognition that "religion" could not be confined to a belief in a "supernatural power"; and that for many in "today's skeptical generation" the "stern and moral voice of conscience occupies that hallowed place in the hearts and minds of men which was traditionally reserved for the commandments of God".

The Government contended below that the *Kauten, Downer* and *Badt* cases are not applicable because the 1940 Act was amended in 1948 by inserting the "Supreme Being" provision. The difficulty with that position is that Congress, by that very amendment, violated the First Amendment under the above-quoted decisions of the United States Supreme Court, especially the *Torcaso, Engel* and *Schempp* cases.

Two recent cases noted above, in which are collected judicial definitions of religion, are particularly relevant here. Both cases involved exemption benefits.

In *Fellowship of Humanity* v. *County of Alameda*, 315 P. 2d 394 (1957), the California appellate court held that a Humanist organization was entitled to have its property exempt from taxes on the ground that it was a religious organization. The California Constitution exempted from real property taxation buildings "used solely and exclusively for religious worship". The basic question, the Court said, was this: "Is a belief in God or gods essential to 'religious worship', as those terms are used in the state Constitution?" A belief in and reverence of God was not essential to membership in the Humanist group seeking the exemption.

After reviewing many judicial, dictionary and expert definitions of religion, the Court stated, in part:

> "Suffice it to say that many authorities in the field include nontheistic beliefs among the world's recognized religions."

The Court concluded:

> "Religion simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment."

To the same effect see *Washington Ethical Society* v. *District of Columbia,* 249 F. 2d 127 (1957) where it was held by the United States Court of Appeals for the District of Columbia Circuit that a Washington ethical cultural society, the members of which were not required to believe in a Supreme Being or supernatural power, was entitled to tax exemption under the Washington, D. C. Code, enacted by Congress, which exempted from certain taxes churches and other buildings used for "religious" services and for "religious worship". The exemption had been denied on the ground that this group did not use its buildings for "religious worship", since "religious" and "worship" require a belief in, and teaching of, a Supreme Being. The Court stated (at p. 129)

> "Reference to standard sources of definitions discloses that the terms 'religion' and 'religious' in ordinary usage are not rigid concepts. Indeed, the definitions in these standard works taken together are by no means free from ambiguity. Some definitions would include only the Christian religion. Some call for belief in and worship of a divine ruling power or recognition of a supernatural power controlling man's destiny. But also included in these definitions is the idea of 'devotion to some

principle; strict fidelity or faithfulness; conscientiousness, pious affecting or attachment.'"

* * * * *

"To construe exemptions so strictly that unorthodox or minority forms of worship would be denied the exemption benefits granted to those conforming to the majority beliefs might well raise constitutional issues."

There are many kinds and definitions of religion.

A religion defined in terms of a belief in "*a* Supreme Being", is not only theistic but also monotheistic. There are other religions that are polytheistic, pantheistic, spiritualistic, animistic, and naturalistic; and still others that are nontheistic, as Buddhism, Confucianism, Taoism, Ethical Culture and Humanism.

This case, unlike *Peter* and *Jakobson*, does not concern, primarily, questions of theology as to the nature of this "Supreme Being" or "one God", or as to the permissible concept thereof under this statute, but it does concern a concept or definition of "religion" involving conscience which is different from "a Supreme Being" definition.

There is no need here to explore or expound the subject in depth. In his Selective Service file, Seeger set forth some definitions and concepts of religion, by Einstein, Whitehead, Kant, Eddington, Hillel and Harkness, which seemingly are reflections of his ideas (R. 113). In a footnote are listed a bare sampling of the many books that deal with this subject.*

* *William James*, "The Varieties of Religious Experience" (1929) Longmans, Green & Co.; *Archer*, "Faiths Men Live By" (1958) Ronald Press; *Ducasse*, "A Philosophical Scrutiny of Religion" (1953) Ronald Press; *Friess and Schneider*, "Religion in Various Cultures" (1932) Holt; *Huston Smith*, "The Religions of Man" (1958) Harper; *John B. Noss*, "Man's Religions" (1949) Macmillan; *Homer W. Smith*, "Man and His Gods" (1952) Little Brown & Co.; *William E. Hocking*, "Living Religions and a World Faith" (1939); *E. O. James*, "The Ancient Gods" (1960) Putnam; *Carl H. Voss*, "The Universal God" (1953) Beacon. *Andrew D. White*, "Warfare of Science with Theology in Christendom" (1896) Macmillan; Frazier, "The Worship of Nature" (1926) Macmillan; Everett, "Religion in Human Experience" (1950) Holt; Rosten, "Religions of America" (1955) Simon & Schuster.

As William James said in his book, there are systems of religion "which do not positively assume a God", and he noted several (at p. 51).

In Professor Ducasse's excellent work, are chapters on the features, nature and concepts of various religions, on "definitions of religion" and on "A nontheistic major religion: Buddhism". He states (at p. 20) that his notes include "some seventy-five" definitions of religion and that J. H. Leuba in his well-known work, "A Psychological Study of Religion" lists forty-eight definitions of religion. He points out that some religions exist in which worship of, or even a belief in, a deity, has no part; and mentions, among others, Buddhism, Jainism, Confucianism, Comte's Religion of Humanity and Contemporary Humanism. In a section on "Theistic and Nontheistic" (at p. 57) he says:

> "Moreover, the use of such terms as God or gods, divinity, deity, divine, theism, bring with it the necessity—too seldom explicitly satisfied—of specifying what marks off spiritual beings or agencies that are "gods", or if impersonal nevertheless "divine", from spirits that are not gods and yet are not the ghosts of the dead."

Then, too, there are the contemporary theologies, typified by Tillich's "Systematic Theology", some of which are mentioned in the recent book by Bishop Robinson, "Honest to God" (1963), wherein are discussed such subjects as "The End of Theism?" and "The Ground of our Being", and in which the very idea of considering God in terms of a "being" is questioned.

A standard definition of "Supreme Being" is that found in the American College Dictionary: "the sovereign of the universe; God".

The universe has expanded immeasurably since Galileo and since most of the world's religious scriptures were written, and is still expanding.

It is difficult to conceive, today, of a "sovereign" of the universe now known to astronomers through modern

astronomy. This immense and seemingly infinite universe is portrayed in recent books on astronomy, such as *Shapley's* "Of Stars and Men" (1958) and *Hoyle's* "The Nature of the Universe" (1950). As they point out, the earth and the solar system are insignificant parts of the tremendous milky way galaxy. This, in turn, says Hoyle, is only one of 100,000,000 galaxies within range of observation, continuing out to a distance of 1,000,000,000 light years, each of which contains, on the average, more than 1,000,000 planetary systems and is about 1,000,000 light years away from any other. Shapley says there are billions of planetary systems in the known universe and at least one million billion high-life planets capable of supporting organic life and the evidence is ever increasing for vast numbers of habitable planets.

Despite all of this, an 18 year old draftee is expected and required to answer, categorically, the awesome question, "Do you believe in a Supreme Being?", if he desires exemption as a conscientious objector. If he hesitates, or expresses the least doubt, he cannot hope, under the law, to be exempted from military service, even though he has a sincere conscientious belief, religious or otherwise, that war is morally wrong.

Surely the Founding Fathers did not intend that the concept of "religion" as used in the Constitution, should be so circumscribed by Congress.

POINT V

No prior federal draft act has contained such a "Supreme Being" provision or drawn a line between religions related to a positive belief in a "Supreme Being" and religions not so related.

The Government's brief (pp. 41-72) reviews prior colonial state and federal draft acts to the end of trying to justify, constitutionally, the "Supreme Being" classifi-

cation in the present Act. Its thesis seems to have been adopted from a law journal article, in which such prior acts are reviewed, written in 1952 before the decisions of this Court in *Torcaso* and other ruling cases. See *Russell*, "Development of Conscientious Objector Recognition in the United States", 20 Geo. Wash. L. Rev. 409 (1952).

The early colonial and state draft acts are interesting historically, but of little or no present constitutional significance. For instance, it is especially interesting that probably the first draft law in this country which provided an exemption for conscientious objectors, was enacted by the colonial government of the "religious freedom" Colony of Rhode Island in 1673, and provided an exemption for the person whose conscience would not permit the bearing of arms and was not limited to those whose objections were based on religious concepts. *Russell, supra*, at pp. 412-3; Rhode Island Act of August 13, 1673; Selective Service System, Vol. II, Backgrounds of Selective Service, Part 12, at pp. 15-16. It provided:

> "Bee it therefore enacted, * * * that noe person nor persons (within this Collony), that is or hereafter shall be persuaded in his, their conscience or consciences (and by him or them declared), that he nor they cannot nor ought not to trayne, to learne to fight, nor to war, nor kill any person or persons.
>
> "That neither he nor they shall at any time be compelled against his or their judgment and conscience to trayne, arm or fight, to kill any person nor persons by reason of, or at the command of any officer of this Collony, civill nor military, * * * nor shall suffer any punishment, fine, distraint, pennalty nor imprisonment, who cannot in conscience trayne, fight, nor kill any person nor persons for the aforesaid reasons expressed * * *" (as in original)

Briefly summarized, the colonial experience was essentially this: Some few colonies, during colonial times, provided for conscientious objection exemption without a

religious basis; most of the colonial draft acts allowed exemptions to those persons whose conscientious objections were based on religious scruples; but none of them prescribed a "Supreme Being" test or criteria to such "religions". In these acts, "conscience", frequently, is equated with "religion".

The Framers of the Federal Constitution, it can be assumed, were familiar with these colonial laws.

Turning to the "Federal" level, on July 18, 1775, just prior to the American Revolution, the Continental Congress passed a resolution stating:

> "As there are some, people, who, from religious principles, cannot bear arms in any case, this Congress intend no violence to their consciences * * *." (*Russell, supra,* at p. 414; 2 J. Cont. 189 (July 18, 1775), Library of Congress 1905.)

Here, again, conscience and religious principles are equated and are not limited or related to a belief in a "Supreme Being".

In the first session of Congress, Madison introduced into the House of Representatives the original draft of the Bill of Rights Amendment to the Constitution, which provided in part:

> "The civil rights of none shall be abridged on account of religious belief or worship * * * nor shall the full and equal rights of conscience be in any manner, or on any pretext infringed * * *.
>
> "The right of the people to keep and bear arms shall not be infringed; * * * but no person religiously scrupulous of bearing arms shall be compelled to render military service in person." (*Russell, supra,* pp. 414-5; 1 Annals of Congress 434 (1789).)

The first clause was passed by the House, as amended, to read:

> "That Congress shall make no law establishing religion or to prevent the free exercise thereof, or to infringe the rights of conscience."

As for the second clause, efforts to limit the persons exempted to those belonging to a religious sect failed and it was adopted by the House. (See *Russell, supra,* pp. 416-7; 1 Annals of Congress (1789) at pp. 434, 435, 730, 749-51, 767.)

Eventually, as the result of conferences with the Senate, the first clause was revised and the second clause for the exemption of religious objectors was eliminated, and the religious clauses of the First Amendment were adopted in their present form.

The "speculations" in the Government's brief (at pp. 47-9) as to the reasons for these changes are not documented. However, this much does seem clear—that there was substantial sentiment for making exemption for a conscientious objector an express constitutional right; and that there was no intention whatever to limit or define "religion" for such exemption purpose or for any other purpose, merely in terms of a belief in a "Supreme Being".

It also seems very likely that the Framers assumed that the rights of conscience were fully protected by, and embodied in, those religion clauses. Cf. *Freeman,* "A Remonstrance for Conscience", 106 U. of Pa. L. Rev. 806, 808-13 (1958).

From the Revolution until the Civil War, Congress consistently refused to enact a federal draft act. *Russell, supra,* pp. 417-8; Selective Service System, 1 Backgrounds of Selective Service 61 (Special Monograph 1947).

The Government refers (Gov. Br. p. 48) to a bill introduced in Congress during the War of 1812 (fortunately never passed) which would have granted exemption to a conscientious objector provided he was "a member of any religious sect or denomination of Christians".

Obviously, such a "Christian" law would have been as unconstitutional as is the present "Supreme Being" law.

In 1863, during the Civil War, the first federal draft law was passed and therein exemptions were allowed only by

providing a substitute or by paying money. 12 Stat. 731, 733 (1863).

Under the 1863 Draft Act, as amended in 1864, exemption from combatant service was accorded to "members of religious denominations * * * conscientiously opposed to the bearing of arms, and * * * prohibited from doing so by the rules and articles of faith and practice of said religious denominations." Exempted persons could either do non-combatant service or pay $300. This Act contained no "Supreme Being" provision. (13 Stat. 9 (1864); *Russell, supra,* 418-19.)

The constitutionality of this Act was not tested; but under recent decisions of this Court such a law, granting exemption only to "members of religious denominations" would seem unconstitutional.

The Militia Act of January 21, 1903 exempted persons whose "religious creed" forbade participation in war (32 Stat. 775 (1903)); and the National Defense Act of June 2, 1916 (39 Stat. 197 (1916)) exempted persons who because of "religious belief" claimed exemption from military service. (*Russell, supra,* p. 420 footnote.)

The next federal draft act was the Selective Draft Act of 1917 (40 Stat. 76 (1917)). Thereunder, exemption from service in the armed forces was provided for "a member of any well-recognized religious sect or organization * * * whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organization * * *."

This act contained no "Supreme Being" provision.

This act was held not to violate the First Amendment in the Selective Draft Law Cases, 245 U. S. 366 (1918) but the point was barely mentioned and not discussed. Under recent decisions of this Court, it undoubtedly would have been declared unconstitutional, in restricting exemption to "members of any well-organized religious sect or

organization". *Kurland*, "Religion and the Law", 1961, at pp. 37-8; cf. Jackson, J., dissenting in *Zorach* v. *Clausen*, *supra*, at p. 325.

The 1940 Draft Act, as noted above, granted exemption to conscientious objectors by reason of "religious training and belief". Again, there was no requirement of a belief in a Supreme Being.

This was the Act that was construed and applied by the Second Circuit Court of Appeals in the *Kauten*, *Downer* and *Badt* cases, *supra*, and it was held therein that the provision "religious training and belief" was not limited to a belief in a deity, but also covered "religion" as broadly defined therein.

The Ninth Circuit Court of Appeals in *Berman*, *supra*, by a divided court, reached a different conclusion and held that "religious training and belief", in this connection, meant a "belief in a relation to God involving duties superior to those arising from any human relation". This concept, obviously, was derived from the sentence taken from the minority opinion written by Justice Hughes in the *Macintosh* case, *supra*.

In inserting the "Supreme Being" provision in the Selective Service Act of 1948, it would appear that Congress followed the *Berman* opinion. (Sen. Rep. No. 1268, 80 Cong., 2nd Sess. (1948).)

This was the first time that any federal draft act had contained such a "Supreme Being" provision or had drawn a distinction between religions based on a "Supreme Being" belief and other religions. Thus, there is *no* historical basis for such a classification in the prior federal draft acts.*

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* In its brief in *Jacobson* (No. 51, this term) the Government admits this (at pp. 18, 20):

> "In the long history of exemptions from military service for conscientious objectors in the United States, we know of no indication of any attempt by Congress to distinguish between or among religious beliefs. * * *

POINT VI

The decisions of U. S. Courts of Appeal, cited in the Government's brief, which have upheld the constitutionality of the "Supreme Being" provision of Section 6(j) were erroneously decided in light of existing constitutional doctrines and are otherwise distinguishable.

In its brief (at p. 18), the Government cites various cases which have upheld the constitutionality of the Supreme Being clause of Section 6(j). These include the cases cited by the Department of Justice in its recommendation of non-exemption (R. 9) and by the District Court in convicting respondent (R. 21-2). These cases are as follows: *United States* v. *Bendik*, 220 F. 2d 249 (2 Cir., 1955); *United States* v. *DeLime*, 223 F. 2d 96 (3 Cir., 1955); *Clark* v. *United States*, 236 F. 2d 13 (9 Cir., 1956), cert. den., 352 U. S. 882; *George* v. *United States*, 196 F. 2d 445 (9 Cir., 1952), cert. den., 344 U. S. 843; *Davidson* v. *United States*, 225 F. 2d 836 (9 Cir., 1955), cert den., 350 U. S. 887 (1955); *Etcheverry* v. *United States*, 320 F. 2d 873 (C.A. 9), cert. den., 375 U. S. 930; *Peter* v. *United States*, 324 F. 2d 173 (C.A. 9), pending on writ of certiorari, No. 29, this Term.

All of these cases, except *Etcheverry* and *Peter*, were decided before *Torcaso* v. *Watkins*, 367 U. S. 488 (1961) and before the constitutional infirmity of such a "Supreme Being" provision had been fully articulated by this Court.

It was not until 1961, in *Torcaso*, that this Court first spelled out the principle that Congress could not pass laws or impose requirements which aid those religions based on a belief in the existence of God as against those religions founded on different beliefs. None of the cited cases, not even *Etcheverry* or *Peter* decided after *Torcaso*, considered this constitutional principle.

The cited cases are otherwise distinguishable.

In the *Bendik*, *DeLime* and *Davidson* cases, the registrants' objections were based on a philosophical or political ground rather than on a religious ground, as here, and in the *DeLime* and *Davidson* cases, the courts did not pass on the constitutional question.

In the *George* case, the Court specifically pointed out (at p. 452) that the registrant, having stated he believed in a Supreme Being, was not in a position to question the validity or constitutionality of Section 6(j). In that case, the Court, in quoting dictionary definitions of "Supreme Being" and definitions of "religion" stated: "There is a dispute among students as to what Religion is"; but concluded that the "Supreme Being" definition in this statute "comports with the standard or accepted understanding of the meaning of 'Religion' in American Society".

(Respondent, of course, questions the idea that Congress can establish as "standard" or "accepted" any definition of religion, and more particularly, one related to a Supreme Being belief.)

In the *Clark* case, the registrant was denied exemption because, according to the Court, registrant's conscientious objection was based upon political, sociological or philosophical views and not by reason of religious training and belief. The Court (at pp. 23-24) relied upon and quoted from the *George* case, and, particularly, pointed out that Congress was free, constitutionally, to restrict the definition of religious training and belief and to deny exemption to registrants which Congress does not class as "religious" in the ordinary acceptance of the word. (This conclusion is questioned by respondent.)

The facts of *Etcheverry* are not disclosed in the brief opinion. The Court merely followed, without comment or discussion, its earlier decisions in *Clark* and *George*, without any reference to the *Torcaso* decision or any of the other decisions of this Court interpreting and defining

the meaning of the "Establishment" and "Free Exercise" clauses of the First Amendment.

In *Peter*, the registrant said his belief in a Supreme Being depended on its definition and the immediate issue there is whether or not *Peter's* belief is related to a Supreme Being. The Court relied on its earlier decisions in *Berman* and *George* and Chief Justice Hughes' definition of religion in his dissent in *Macintosh* and, quoting from those earlier cases, said that, • • • "it is far beyond the power of this court to change the definition placed in the act by Congress": and that no matter how devotedly *Peter* adheres to it, "his philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute." The Court did not mention *Torcaso* or other related cases.

All of these cases, except *Bendik* and *DeLime*, were decided by the Ninth Circiut Court of Appeals and were predicated upon its decision in *Berman* v. *United States*, 156 F. 2d 377 (9 Cir., 1946), cert. den. 329 U. S. 795 (1946).

More recently, that Court in *MacMurray* v. *United States*, 330 F. 2d 928, 929 (1964), upon basing its decision on other grounds, said it "need not consider the suggestion that our prior decisions upholding the constitutionality of the Act (Etcheverry v. United States, 320 F. 2d 873 (9th Cir. 1963) and cases cited) should be re-examined in the light of the contrary decision in United States v. Seeger, 326 F. 2d 846 (2nd Cir. 1964)."

Respondent contends that the decision of the Court of Appeals herein is entirely correct, in light of *Torcaso* and other cognate decisions of this Court, and that the decisions above upholding the constitutionality of Section 6 (j) were wrongly decided.

POINT VII

The Selective Draft Law Cases are not controlling here.

The Government relies (Gov. Br. pp. 18, 20, 21, 28, 29, 33) upon the *Selective Draft Law Cases*, 245 U. S. 366 (1918).

Those cases, and the companion cases cited by the government (Gov. Br. p. 21), arose under the Selective Draft Law of 1917 which exempted regular or duly ordained ministers of religion, theological students and members of any well-organized and existing religious sect or organization whose creed or principles forbade its members to participate in war in any form (Selective Draft Act of 1917, 40 Stat. 76 (1917)). The Court did not discuss the contention that this law violated the First Amendment. It merely stated, in passing, (at pages 389-90):

> "And we pass without anything but statement the proposition that an establishment of a religion or an interference with the free exercise thereof repugnant to the First Amendment resulted from the exemption clauses of the act to which we at the outset referred, because we think its unsoundness is too apparent to require us to do more."

This case was decided before the later decisions of this Court which have delineated the meaning of the "Free Exercise" and "Establishment" clauses of the First Amendment. In retrospect, and in light of those latter decisions, it seems clear that said exemption provision of the 1917 Selective Draft Act actually was in violation of the First Amendment.

In his recent book "Religion and the Law" (1961), Professor Philip B. Kurland of the University of Chicago states, at pages 37-8, as follows:

> "*The Selective Draft Law Cases* brought to the Court appeals from convictions for evasion of the

draft law. Among the many issues raised by the defendants was the question whether the classification contained in the language quoted from the statute was invalid as a violation of the first amendment separation clause. Mr. Chief Justice White's opinion for a unanimous Court, rendered during the height of the American participation in World War I, disposed of the issue quickly, but without authority or reason. * * * The decision is as sound as the reasons given for it. The statute did not exempt all whose consciences forbade them to fight. It exempted only those with proper religious allegiances. It may be more difficult for some than it was for Chief Justice White to see why this classification was not a breach in the high wall of separation."

POINT VIII

Additional comments in reply to Government's brief.

The basic arguments advanced in the Government's brief already have been met. Some few additional comments might further clarify the issues.

The Government, throughout its brief, seeks in various ways to justify the classification of religions set up by Congress in Section 6(j). That classification, constitutionally, cannot be justified, in any way.

It has already been noted herein that Seeger is not a "non-religious" objector, as the Government now seeks to identify him in order to undergird its argument designed to justify a classification between "religious" and "non-religious" objectors.

The Government says (Gov. Br. p. 11) that Section 6(j) is "as 'neutral' a measure as could be devised". Actually, it is not "neutral" at all, either as between kinds of religious beliefs or as between religious beliefs and non-religious beliefs.

The Government argues (Gov. Br. pp. 19-33) that Section 6(j) "accommodates" the "free exercise of religion"

to the needs of conscientious objectors whose religion is based on a belief in a "Supreme Being".

This may be so, as noted above, but it does not recognize the "free exercise" of religion claims of nontheistic objectors like Seeger (nor the "free exercise" claims of nonbelievers). This Court has said, in the cases cited in the Government's brief and above, that they too, come within the coverage of the "religion" clauses of the First Amendment. Such a limited "accommodation", is an actual preferment and an invidious discrimination.

The *Sherbert* case did not involve a legislative act which provided an exemption for persons of particular religious views but not for persons of other religious views. The legislation there did not mention religion or any particular religion.

The issue here is not (Gov. Br. p. 33) whether Congress has power "to decide to accommodate persons whose religious convictions forbid participation in war"; but, rather, whether it has power to decide to accommodate *only* those persons whose religious convictions forbid participation in war and, also, include a belief in "a Supreme Being."

The Government (Br. p. 24) argues that the establishment clause "does not require the government to ignore religious beliefs in the framing of legislation dealing for secular purposes with conduct conforming, in some instances, to the dictates of religion"; and that the aim of the exemption "is to alleviate the harshness which would result if individuals were compelled to flout the commands of their religion in order to obey those of the State."

But, here, the point is that the Government in framing legislation for a legitimate secular purpose cannot, either under the "Establishment Clause" or the "Free Exercise Clause" prefer one religious belief over another. To obtain exemption status Seeger would have had to flout the commands of *his* religion. Government cannot penalize persons of one kind of religious belief by denying benefits

available to persons of another kind of religious belief—especially if the distinction is merely between theistic and nontheistic religious beliefs because certainly there can be no suggestion here that the exercise of a belief not based on a Supreme Being involves any criminal conduct or that in this respect, at least, the "Supreme Being" type of belief is superior to the other.

This statute has the purpose and effect to frustrate the free exercise of, and to discriminate invidiously against, nontheistic religions. It is not necessary for Congress in the advance of the secular purposes of the draft law to draw such a distinction, as the Court of Appeals pointed out (R. 37); cf., *Braunfeld, supra,* at p. 607. The Government did not do so in the 1940 Draft Act.

The "Establishment Clause, in the contemplation of the Framers, 'did not limit the constitutional proscription to any particular, dated form of state-supported theological venture'," *Schempp, supra,* Brennan J., concurring, at p. 234.

The Government states (Gov. Br. pp. 41, 71; also in its *Jakobson* brief, pp. 18, 20) that the history of draft laws in this country shows that the scope of exemptions for conscientious objectors "has always been limited to those whose opposition was based upon religious belief" and that therein Congress never attempted to distinguish between or among religious beliefs. Actually, in most of those prior laws, exemption was limited, by name or general description, to members of organized, recognized, pacifist religions.

But, as pointed out above (Point V) in these prior draft laws, particularly in the federal enactments, no distinction was made between religions based on a "Supreme Being" belief and religions based on other beliefs. In this respect, the present draft law is novel. Thus, even historically, such a classification cannot be justified, apart from its unconstitutionality.

The Government argues (Gov. Br. p. 80, 14) that the "Supreme Being" provision of Section 6(j) is justified because, according to the Government, it is "in keeping with the ideals and traditions of the American people", embodies "the understanding of religion shared by the great majority of the American people" and would meet with the approval of "the great bulk of the people affected" and the "consensus". Even assuming the truth of these statements, they present no valid constitutional criteria. Non-traditional, minority and unpopular religions are equally entitled to the protection and benefits of the First Amendment.

The Government, in effect, seeks (Gov. Br. p. 72) to have written into the First Amendment, as the single and authoritative definition of religion", the remark of Chief Justice Hughes in his dissent in the *Macintosh* case, that "The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation". To this same end, the Government also invokes the statement, first made by Justice Douglas in *Zorach, supra*, that "We are a religious people whose institutions presuppose a Supreme Being" (Gov. Br. p. 27, 81). The Government fails to point out (as Justice Douglas did in his dissent in *McGowan, supra* (at p. 563)) that his reasons for that statement were:

> "The Puritan influence helped shape our constitutional law and our common law as Dean Pound has said: The Puritan 'put individual conscience and individual judgment in the first place.' The Spirit of the Common Law (1921), p. 42."

Nor, does the Government note that this Court has stated that that statement does not mean "that religion has been so identified with our history and government that religious freedom is not likewise as strongly embedded in our public and private life." *Schempp, supra* (at p. 214).

As pointed out above (p. 41-2), if Congress were to pass a law that "no religious test should even be required as a qualification to any office or public trust under the United States, *other than a declaration of a belief in the existence of a Supreme Being*", such a law, obviously, would be unconstitutional. It would inject a "Supreme Being" belief into the "religious test" provision of Article VI, Clause 3 and would ban all but "Supreme Being" believers from public office. This would resurrect the very situation that the Constitutional provisions were designed to prohibit, because laws like that existed in the Colonies before the Constitution was adopted. See *Torcaso, supra* (at p. 494). And yet, according to the Government's argument, that is precisely what Congress can, and should be permitted by this Court to, do in respect of the "religion" clauses of the First Amendment. That, of course, would violate the principle that Constitutional provisions relating to the same subject should be harmoniously read and construed.

After suggesting that there should be read into the term "religion", as used in the First Amendment, the limited concept of a religion based on a belief in a Supreme Being or one God, the Government proceeds to argue that the classification established by Section 6(j) "includes all 'religious objectors' who are seeking to follow the commands of 'religion' as that term is used in the First Amendment"; and that, in any event, it is "immaterial" whether "the lines drawn by the statute coincide exactly with the meaning of 'religion' in the First Amendment" (Gov. Br. p. 75). Also, it argues (Gov. Br. p. 60) that Section 6(j) "does not discriminate between religions as that term is used in the First Amendment." Nevertheless, it recognizes that "constitutional doubts" arise from granting exemptions to persons holding one religion and not to those holding another (Gov. Br. 73).

It *is* vitally *material,* constitutionally, that Congress, in making laws, shall draw lines which coincide *exactly* with the meaning of the word "religion" as used in the First Amendment. In this statute Congress has not done so, and "constitutional doubts" have arisen precisely for that reason.

The Government says (Gov. Br. pp. 13, 76) that the statutory definition "covers the core of 'religious' objectors in the constitutional sense of religion even if there is argument about the periphery". But the draft authorities ruled that the statute does not cover Seeger's religion. The Constitution draws no line between "core" and "periphery" religions.

Nor does the Constitution draw any line between a religious belief compelled, externally, from an assumed divine command and one that is compelled, internally, from the dictates of conscience (Gov. Br. 75, 76).

The Government (Gov. Br. 66) suggests that "religion" does not include "conscience" and that "conscience" and "religion" cannot be equated for purposes of the First Amendment. Actually, the two terms were equated in colonial constitutions and in the debates in the Constitutional Convention, and are still being so used today. For example, in the New York State Constitution it is provided (Article I, Section 3):

> "Freedom of worship; religious liberty.
>
> The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the *liberty of conscience hereby secured* shall . . ." (Italics added.)

Another example is this familiar passage from *Girouard* v. *United States*, 328 U. S. 61, 68 (1946):

> "The struggle for religious liberty has through the centuries been an effort to accommodate the demands of the State to the conscience of the individual. The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State."

Judge Hand was entirely right in observing in *Kauten*, *supra* (at p. 708), that the response of an individual to conscience is a "religious impulse."

There is no indication in the record here, that the present classification operates any more successfully, for example, than the 1940 Draft Act (Gov. Br. pp. 14, 78, 79).*

Although difficulties are inherent in any statute of this kind involving religious beliefs and conscientious objectors, it is hard to understand why it should be any more difficult for the draft authorities to determine whether a registrant is sincere and has or has not a religious belief, than it is to determine whether a registrant is sincere and does or does not believe in an "acceptable" kind of a Supreme Being, witness the *Peter* and *Jakobson* cases. The Court of Appeals points this out (R. 37); and the draft officials had no difficulty ascertaining Seeger's sincerity, without a professed belief by him in a Supreme Being.

In this context, it may be observed that in this sensitive area difficulties do arise, occasionally, in judging the sincerity and truth of a person's conscience or religion or

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* As noted above (p. 34), in Great Britain and a number of other countries, draft acts exempting *all* sincere conscientious objectors have been in effect and apparently have operated successfully.

belief in a Supreme Being. Cf. *United States* v. *Ballard*, 322 U. S. 78 (1944). Because the divine source of his teachings was not recognized or accepted by the prevailing authorities, Jesus was crucified. Because her visions and voices were determined by a council of learned theologians not to have been derived from the true God, Joan of Arc was burned. Because the daemon whose "voice" counselled him was not recognized as being related to the prevailing divinities of Greece, Socrates was condemned to die by poison. From the point of view of the authorities of the times those three cases were probably "successful operations"!

In any event, a "successful operation", from the Government's point of view, is not a valid criteria, constitutionally. Numerous laws which have operated successfully from government's point of view have been stricken down as in conflict with the First Amendment.

Nor, is there any reason why Congress should accord relief only to those whose situation appeals to it "most compelling to the instincts of toleration and compassion" (Gov. Br. p. 80). Every sincere conscientious objector, whatever his religious belief or theology, is entitled, equally, to the Government's toleration and compassion.

Draft exemptions should not be restricted, as in this statute, to conscientious objectors who have, or profess to have, a belief in the "Supreme Being" kind of religious concept. The statute is clearly unconstitutional. To hold the statute to be valid, under the Constitution, would be to restore the historically and constitutionally discredited policy of discriminating against persons because of their belief in some particular kind of religious concept. Cf. *Torcaso, supra,* at p. 494.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the United States Court of Appeals, Second Circuit, should be affirmed, with costs.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1964

No. 29

FOREST BRITT PETER, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

---

No. 50

UNITED STATES OF AMERICA, *Petitioner,*

vs.

DANIEL ANDREW SEEGER.

On Writ of Certiorari to the United States Court of Appeals For the Second Circuit

---

No. 51

UNITED STATES OF AMERICA, *Petitioner,*

vs.

ARNO SASCHA JAKOBSON.

On Writ of Certiorari to the United States Court of Appeals For the Second Circuit

---

BRIEF FOR THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

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TABLE OF CONTENTS

	PAGE
INTEREST OF THE AMICUS	2
PRELIMINARY STATEMENT	2
THE STATUTE INVOLVED	3
THE QUESTION TO WHICH THIS BRIEF IS ADDRESSED	3
SUMMARY OF ARGUMENT	4
ARGUMENT	
I. Limiting conscientious exemption to persons believing in a Supreme Being constitutes preferential treatment of certain religions over others in violation of the First Amendment	5
II. Administration of the requirement of belief in a Supreme Being would impose upon civil officials the duty of making theological determinations, in violation of the First Amendment	12
CONCLUSION	15

TABLE OF AUTHORITIES

Cases:

Abrams v. United States, 250 U. S. 616 (1919)	11
Arver v. United States, 245 U. S. 366 (1918)	10
Braunfeld v. Brown, 366 U. S. 579 (1961)	10
Church of Jesus Christ of Latter-Day Saints v. United States, 136 U. S. 1 (1890)	14

PAGE

Davis v. Beason, 133 U. S. 333 (1890) 6, 7

Endo, Ex parte, 323 U. S. 283 (1944) 11
Engel v. Vitale, 370 U. S. 421 (1962) 8
Everson v. Board of Education, 330 U. S. 1 (1947) 5, 6, 8

Ferguson v. Skrupa, 372 U. S. 726 (1963) 8
Fowler v. Rhode Island, 345 U. S. 67 (1953) 5

Gallagher v. Crown Kosher Market, 366 U. S. 617 (1961) 10

Hamilton v. Regents of the University of California, 293 U. S. 245 (1934) 10–11
Harmon v. Brucker, 355 U. S. 579 (1958) 11
Hirabayashi v. United States, 320 U. S. 81 (1943) 11

Kedroff v. St. Nicholas Cathedral, 344 U. S. 94 (1952) 14
Kennedy v. Mendoza-Martinez, 372 U. S. 144 (1963) 11
Korematsu v. United States, 323 U. S. 214 (1944) 11
Kreshik v. St. Nicholas Cathedral, 363 U. S. 190 (1960) 14

McCollum v. Board of Education, 333 U. S. 203 (1948) 5, 8
McGowan v. Maryland, 366 U. S. 420 (1961) 8
Milligan, Ex parte, 4 Wall 2 (1866) 12

Reynolds v. United States, 98 U. S. 145 (1878) 6

Sherbert v. Verner, 374 U. S. 398 (1963) 9, 10
Summers, In re, 325 U. S. 561 (1945) 11

Thomas v. Collins, 323 U. S. 516 (1945) 9
Thornhill v. Alabama, 310 U. S. 88 (1940) 9
Torcaso v. Watkins, 367 U. S. 488 (1961) 4, 5, 6, 7, 8, 9, 10

PAGE

United States v. Ballard, 322 U. S. 78 (1944) 14
United States v. Carolene Products, 304 U. S. 144 (1938) 8

Watson v. Jones, 80 U. S. 679 (1871) 13, 14
West Virginia State Board of Education v. Barnette, 319 U. S. 624 (1943) 9, 11

Zorach v. Clauson, 343 U. S. 306 (1952) 5, 7

Statute:

50 U. S. C. App. 456(j) of the Universal Military Training and Service Act 2, 3

Other Authorities:

Chafee, FREE SPEECH IN THE UNITED STATES 11

Hearings, House Committee on Judiciary, 88th Congress, 2nd Session, Senate No. 9, Part III, pp. 2600 *et seq.* 7

1 Jefferson's Writings (ed. Ford) 62 6

Paine, COMMON SENSE 15

Stokes and Pfeffer, CHURCH AND STATE IN THE UNITED STATES (1964), p. 560 ..... 6, 12–13

Zollman, AMERICAN CHURCH LAW, 31 7

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BRIEF FOR THE AMERICAN JEWISH CONGRESS, *AMICUS CURIAE*

Interest of the *Amicus*

The American Jewish Congress is a national organization of American Jews, founded by Rabbi Stephen S. Wise, Supreme Court Justice Louis D. Brandeis, Federal Judge Julian Mack and others, to protect the religious, civil, political and economic rights of Jews and to promote the principles of democracy. We are especially committed to the preservation of the great freedoms secured by the First Amendment and to the expansion by judicial interpretation of the mantle of its protection. Since the question in issue in the three cases before the Court concerns the interpretation of the First Amendment's guaranty of religious liberty and the separation of church and state, we have sought and obtained the consent of counsel for the parties in all three cases to the submission of this brief *amicus curiae*.

Preliminary Statement

In all three cases, persons called for induction into the armed forces asserted that they were entitled to exemption from military service as conscientious objectors, under Section 6(j) of the Universal Military Training and Service Act. In all three cases, the claims were rejected by the local draft boards on the ground that the draftees did not satisfy the statutory requirement of belief in a Supreme Being. In all the cases, the draftees refused to submit to induction and were prosecuted and convicted for such refusal. In two of the cases (*Seeger* and *Jakobson*), the Court of Appeals for the Second Circuit reversed the convictions; in the third (*Peter*), the Court of Appeals for the Ninth Circuit affirmed.

The Statute Involved

The pertinent part of Section 6(j) of the Universal Military Training and Service Act, 50 U. S. C. App. 456(j), provides:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *

The Question to Which this Brief is Addressed

The sole question to which this brief is addressed is whether Congress may, consistently with the First Amendment, limit the exemption from military service of conscientious objectors to those who believe in the existence of a Supreme Being. We assume for the purposes of this brief that no additional force is derived from the due process clause of the Fifth Amendment and that a classification in respect to military exemptions which does not transgress the specific mandates of the First Amendment would be reasonable within the equal protection requirement implicit in the due process clause.

We assume too, for the purposes of this brief, that Congress can constitutionally exempt from military service

those whose unwillingness to participate is based on religion while refusing to exempt those whose unwillingness is based on philosophical, intellectual and other non-religious motivations.

Summary of Argument

I. In *Torcaso* v. *Watkins,* 367 U. S. 488 (1961), this Court held that a state could not constitutionally bar from public office persons unwilling to affirm a belief in God. Such action, the Court held, would violate the establishment clause of the First Amendment by preferring theistic over non-theistic religions. The term "Supreme Being" in the military exemption statute is synonymous with "God," but even if that were not so, the First Amendment bars preferential treatment of religions based on a Supreme Being over religions not so based. No constitutional distinction can be made between eligibility for public office and exemption from military service.

II. Administration of the requirement of belief in a Supreme Being would impose upon draft boards theological determinations which the First Amendment excludes from the competence of civil authorities.

ARGUMENT

I

Limiting conscientious exemption to persons believing in a Supreme Being constitutes preferential treatment of certain religions over others in violation of the First Amendment.

Whatever else the no-establishment clause of the First Amendment commands, it certainly commands governmental neutrality among religions. *Fowler* v. *Rhode Island,* 345 U. S. 67 (1953); *Torcaso* v. *Watkins, supra*; *Everson* v. *Board of Education,* 330 U. S. 1 (1947); *McCollum* v. *Board of Education,* 333 U. S. 203 (1948); *Zorach* v. *Clauson,* 343 U. S. 306 (1952). Government, it was held in *Torcaso,* may not prefer members of certain religions over members of other religions in determining eligibility for public office.

Religion and belief in God, as was pointed out in *Torcaso,* are not synonymous. There are ancient, well-recognized religions that are not theistic, religions such as Buddhism, Taoism and Confucianism.

A military exemption law limited to adherents of the Christian faith would obviously be unconstitutional. So too would be one which specifically excluded Buddhist, Taoists and Confucianists. Yet, this is precisely what is effected by requiring belief in God as a condition to exemption. The concept of God as generally understood is basically Judaeo-Christian (and Moslem), and Congress may no more prefer these religions over non-theistic faiths

than it may prefer Christians over Jews; and it may no more effectuate such a preference by framing it in terms of a belief in God than in terms of a belief in Jesus Christ.

It need hardly be urged that the fact that the number of adherents of non-theistic religions in the United States may be small[1] is not constitutionally significant. There were few non-Christians in Virginia in 1786; yet, according to Jefferson, the great Bill for Establishing Religious Freedom, upon which the First Amendment is founded,[2] was "meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and the Mohametan, the Hindu, the infidel of every denomination."[3]

This Court's language in *Torcaso* was clear, emphatic and unqualified. Neither the Federal government nor a state "can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs" (367 U. S. at 495 (1961)).[4]

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1. In one state of the Union, Hawaii, Buddhism is probably the major faith, if Catholicism and Protestantism are deemed different religions. Stokes and Pfeffer, *Church and State in the United States* (1964) p. 560.

2. *Everson* v. *Board of Education,* 330 U. S. 1, 13 (1947); *Reynolds* v. *United States,* 98 U. S. 145, 164 (1878); *Davis* v. *Beason,* 133 U. S. 333, 344 (1890).

3. 1 Jefferson's Writings (ed. Ford) 62.

4. As noted above in the statement of the question to which this brief is addressed, we take no position on the constitutionality of distinguishing between objection to military service on religious and non-religious grounds. It is therefore unnecessary to consider whether such a distinction might be justified in terms of protecting rights under the free exercise clause while at the same time providing for the common defense.

We cannot accept the validity of the assertion in the Government's Brief in the *Seeger case* (at p. 73) that, by use of the term "Supreme Being" rather than "God," Congress showed that it did not intend to require belief in any traditional concept of God, and that, presumably, *Torcaso* is therefore distinguishable.

In the first place, the term "Supreme Being" would seem to be more personal and anthropomorphic than the neutral word "God." Secondly, there is no evidence at all that Congress had such intent; the terms "God" and "Supreme Being" are generally taken as synonymous. It is common practice to use various synonyms for the Deity. The Declaration of Independence refers to "Nature's God," "Creator," "Supreme Judge of the World," and "Divine Providence." References to the Deity in preambles to state constitutions include "God," "Almighty God," "Supreme Being," "Sovereign Ruler of Nations," and "Supreme Ruler of the Universe."[5] In *Davis* v. *Beason* (133 U. S. 333 (1890)), the Court speaks of man's relations to his "Creator," in *Zorach* v. *Clauson* (343 U. S. 306 (1952)) and *Engel* v. *Vitale* (370 U. S. 421 (1962)) to a "Supreme Being."

In none of these instances, nor anywhere else in non-theological literature, as far as we could discover, is there evidence of an intent that the use of different appellations

5. Zollman, American Church Law, 31. In the collection of "Provisions of State Constitutions and Statutes Relating to God, Divine Being, etc." prepared by the Library of Congress for House Committee on the Judiciary in connection with its hearings on School Prayers, the descriptive heading for these preambles is uniformly "God, Supreme Being." Hearings, House Committee on Judiciary, 88th Congress, 2nd Session, Senate No. 9, Part III, pp. 2600 et seq.

for the Diety should connote different consequences, and particularly not different consequences in law and government.

In any event, the same constitutional provision that forbids preferential distinctions between religions which are based on a belief in God and those which are not, forbids equally such distinctions between religions based upon a belief in a Supreme Being and religions not so based. The declaration in *Everson, supra, McCollum, supra, McGowan* v. *Maryland* (366 U. S. 420 (1961)) and *Engel* v. *Vitale, supra,* that government may not "prefer one religion over another" makes no qualification in respect to religions not based upon a belief in a Supreme Being, any more than in respect to those based on a belief in God. Can it be seriously urged that the result in *Torcaso* would have been different had Maryland required affirmation of belief in a Supreme Being rather than in God?

Nor can we accept the validity of the government's contention that a classification for military exemption based upon belief in a Supreme Being is a reasonable one. Were there no First Amendment, the argument might be tenable. The test of reasonableness in classification under the Fifth and Fourteenth Amendments is far more liberal than under the First; the scope of permissible governmental discretion is far broader. Legislative classification affecting business or commercial interests will rarely be disturbed by the Court. *Ferguson* v. *Skrupa,* 372 U. S. 726 (1963). In such cases, the Court will interfere only if the classification is patently unreasonable. *United States* v. *Carolene Products,* 304 U. S. 144 (1938). But for legislation abridging a liberty secured by the First Amendment, a more rig-

orous test is imposed. "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice." *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). "Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions." *Thornhill* v. *Alabama*, 310 U. S. 88, 95-96 (1940). See also *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639 (1943).

Broad discretion is given to government in fixing qualifications for its officers and employees and, absent the First Amendment, it could not be said that a determination by a state that believers in God are likely to be more honest and conscientious civil servants than non-believers would be arbitrary and unreasonable. As argued by the State of Maryland in *Torcaso*, it could hardly be deemed unreasonable to require that a notary public (the office involved in that case) who is given the power to administer oaths himself believe in God. Brief for Appellee in *Torcaso*, p. 19. As noted by the Court in *Sherbert* v. *Verner* (374 U. S. 398, 410 (1963)), there was in *Torcaso* "an undoubted state interest in ensuring the veracity and trustworthiness of Notaries Public."

But the answer, as *Torcaso* makes clear, is that there are certain classifications which the First Amendment forbids government to make, irrespective of their possible fac-

tnal reasonableness, and one of these is a classification based upon a belief in God.

The Sunday Law cases, and specifically *Gallagher* v. *Crown Kosher Market* (366 U. S. 617 (1961)) and *Braunfeld* v. *Brown* (366 U. S. 579 (1961)),[6] are not inconsistent with this assertion. The Court there held that Sunday laws are today secular laws for the purpose of ensuring a uniform day of rest, and that the states are not constitutionally required to accord exemptions for religious reasons. But nothing in the Court's decision can be interpreted to give any support to an argument that the states could constitutionally exempt adherents of certain non-Christian religions from the operation of the statute while withholding the exemption from adherents of other faiths. We are confident that this Court would not uphold a statutory exemption to Sunday laws in favor of only those who observe Saturday as their holy day of rest but denied it to those who, with equal religious sincerity, observe Friday as their holy day of rest. Nor, we suggest, would the unconstitutionality of such a classification be mitigated by a not unreasonable state finding that policing problems would be much more difficult if the exemption were not limited to a single, specific day.

Nor can *Torcaso* be distinguished because in the present case the governmental interest involved is national defense. The interest of national defense might justify a refusal by Congress to grant any exemption on grounds of religious conscience. *Arver* v. *United States*, 245 U. S. 366 (1918); *Hamilton* v. *Regents of the University of Cali-*

6. We suggest that the force of these decisions has been substantially weakened by *Sherbert* v. *Verner*, 374 U. S. 398 (1963).

fornia, 293 U. S. 245 (1934); *In re Summers*, 325 U. S. 561 (1945). But, we submit, nothing in these or any other decisions that we know of supports a conclusion that once Congress has elected to grant exemption based upon religious belief it can exclude from the grant adherents of particular minority or unconventional faiths whose religious objection to military service is not less sincere than that of adherents to the more popular and conventional faiths.

There was a time when assertion of the needs of national defense almost foreclosed all further judicial inquiry and freed government from the restraints imposed by the Bill of Rights. *Cf. Abrams* v. *United States*, 250 U. S. 616 (1919); *Hirabayashi* v. *United States*, 320 U. S. 81 (1943); *Korematsu* v. *United States*, 323 U. S. 214 (1944); Chafee, *Free Speech in the United States, passim.* Fortunately, that time has passed and hopefully will not return. *Cf. West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624 (1943); *Ex parte Endo*, 323 U. S. 283 (1944); *Harmon* v. *Brucker*, 355 U. S. 579 (1958); *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144 (1963).

The cases now before the Court involve peacetime conscription, but we believe the classification in the exemption statute between religions based upon a belief in God and those not so based would be equally unconstitutional in time of war. As this Court has said but recently in *Kennedy* v. *Mendoza-Martinez*, 372 U. S. at 165:

> The imperative necessity for safeguarding these [constitutional] rights * * * under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis,

that there is the greatest temptation to dispense with fundamental constitutional guarantees, which, it is feared, will inhibit governmental action. "*The Constitution of the United States is a law for rulers and people, equally in war and in peace,* and covers with the shield of its protection all classes of men, at all times and under all circumstances * * * [I]f society is disturbed by civil commotion—if the passions of men are aroused and the restraints of law weakened, if not disregarded * * * these safeguards need, and should receive, the watchful care of those intrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution." (Emphasis added, quoting *Ex parte Milligan,* 4 Wall 2, 120-121, 124 (1866).)

II

Administration of the requirement of belief in a Supreme Being would impose upon civil officials the duty of making theological determinations, in violation of the First Amendment

A perusal of the records in all three cases before the Court shows vividly how deeply involved in theology draft boards become when they are required to determine whether or not a particular applicant for exemption believes in God or a Supreme Being. The draft board's task might be simpler if the exemption statute followed some early state constitutions, such as those of Pennsylvania and South Carolina, which required belief not only in "one eternal God" but also in heaven and hell and the truth and divine inspiration of the Bible. Stokes and Pfeffer, *Church and*

State in the United States, p. 81. Yet, the history of both Judaism and Christianity indicates that, even when the conception of God was bounded by the limits of the Old and New Testaments, there were fundamental theological divisions and that one group's God was another's heresy. In any event, the government does not contend nor, in view of the doctrine of *Watson* v. *Jones* (80 U. S. 679 (1871)) that the "law knows no heresy and is committed to the support of no dogma," could it contend that statutory exemption can constitutionally be limited to those who believe in the God of Torquemada or Jonathan Edwards.

If the draft boards are denied the aid of orthodox dogma in their deliberation, what standards then are available to them in deciding whether that in which the young man before them believes is a Supreme Being? What star will they have to guide them in this theological "sea of uncertainty and doubt"? *Watson* v. *Jones, supra,* at p. 732.

Suppose that, when debating the bill to amend the exemption law to require belief in a Supreme Being, some member of Congress insisted that some legislative standard be prescribed to guide the draft boards in the performance of their statutory duty. Suppose, further, that amendments were offered to define "Supreme Being." One can imagine with amazement the theological disputations that might ensue.

Suppose, finally, that, after lengthy committee hearings and floor debates, an amendment were adopted setting forth a definition of "Supreme Being." Can it be doubted that such a statutory definition—no matter how broadly phrased—would violate the mandate of the First Amendment? Can

there be any law more clearly an establishment of religion than one which establishes a definition of the Deity? And, if the Congress is constitutionally incompetent to make such a definition, can it effect this end by delegating the responsibility to thousands of local draft boards throughout the nation, particularly with no guides of any kind to assist them in discharging this truly awesome responsibility?

If the records in each of these three cases were presented to a panel of universally recognized competent theologians, it is safe to predict that they would differ sharply on whether what each of the three draft registrants believed in could reasonably be considered a "Supreme Being." How, then, can one expect a draft board of ordinary citizens to sensibly make such determination? *Watson* v. *Jones, supra; Kedroff* v. *St. Nicholas Cathedral* (344 U. S. 94 (1952)), and *Kreshik* v. *St. Nicholas Cathedral* (363 U. S. 190 (1960)) all reflect a strong constitutional policy against involvement of civil agencies in the area of theology. The cases recognize their total incompetence in this field.

It is true that, assuming as we do that an exemption limited to religious conscientious objection is constitutional, draft boards must determine whether the motivation of applicants for exemption is religious. This is no easy task, and this Court itself has had considerable difficulty with it. *Cf. Church of Jesus Christ of Latter Day Saints* v. *United States,* 136 U. S. 1 (1890); *United States* v. *Ballard,* 322 U. S. 78 (1944). But these difficulties pale in comparison to those accompanying efforts to ascertain whether the applicant believes in a "Supreme Being."

Moreover, inquiry in respect to religious motivation may be unavoidable. In *Common Sense,* Thomas Paine wrote that: "As to religion, I hold it to be the indispensable duty of government to protect all conscientious professors thereof, and I know of no other business which government hath to do therewith." This dichotomy was formalized in the command of the First Amendment that Congress make no law respecting an establishment of religion or prohibiting its free exercise. But in order to protect conscientious professors in the free exercise of religion it may well be necessary to determine whether that which they are exercising is indeed religion. To this extent, inquiry into what is more properly the domain of theology and philosophy may be unavoidable. But beyond that, we submit, the Constitution does not permit civil agencies to go. They may neither define God nor equate religion with belief in a constitutionally undefinable God.

Conclusion

The judgments in *Seeger* and *Jakobson* should be affirmed and the judgment in *Peter* reversed.

Respectfully submitted,

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October, 1964

INDEX

CITATIONS

Cases:

	Page
Abington School District v. *Schempp*, 374 U.S. 203	9, 10
Blackmer v. *United States*, 284 U.S. 421	4
Bolling v. *Sharpe*, 347 U.S. 497	14
Cantwell v. *Connecticut*, 310 U.S. 296	8
Cox v. *New Hampshire*, 312 U.S. 569	8
Engel v. *Vitale*, 370 U.S. 421	9, 10
Everson v. *Board of Education*, 330 U.S. 1	10
Follett v. *Town of McCormick*, 321 U.S. 573	8
Fowler v. *Rhode Island*, 345 U.S. 67	9
Hamilton v. *Regents*, 293 U.S. 245	11
Illinois ex rel. McCollum v. *Board of Education*, 333 U.S. 203	10
Jamison v. *Texas*, 318 U.S. 413	8
Jeffrey Mfg. Co. v. *Blagg*, 235 U.S. 571	4
Kunz v. *New York*, 340 U.S. 290	8
Largent v. *Texas*, 318 U.S. 418	8
Marsh v. *Alabama*, 326 U.S. 501	8
Martin v. *City of Struthers*, 319 U.S. 141	8
McGowan v. *Maryland*, 366 U.S. 420	10
Murdock v. *Pennsylvania*, 319 U.S. 105	8
Niemotko v. *Maryland*, 340 U.S. 268	8
Poulos v. *New Hampshire*, 345 U.S. 395	9
Prince v. *Massachusetts*, 321 U.S. 158	8
Reynolds v. *United States*, 98 U.S. 145	11
Selective Draft Law Cases, 245 U.S. 366	11
Sherbert v. *Verner*, 374 U.S. 398	11
Steamship Co. v. *Emigration Commissioners*, 113 U.S. 33	4

753-182--64---1

Cases—Continued Page

Torcaso v. *Watkins*, 367 U.S. 488 9
Tucker v. *Texas*, 326 U.S. 517 8
United States v. *Kauten*, 133 F. 2d 703 3
United States v. *Raines*, 362 U.S. 17 4
United States v. *Wurzbach*, 280 U.S. 396 4
Virginian Ry. Co. v. *Federation*, 300 U.S. 515 4
West Virginia State Board of Education v. *Barnette*, 319 U.S. 624 9
Zorach v. *Clauson*, 343 U.S. 306 10

Constitution:
Constitution of the United States:
First Amendment .. 2, 3, 7, 8, 9, 10, 11, 12, 13, 14
Fifth Amendment 7, 14

Statute:
Universal Military Training and Service Act, Sec. 6(j), 50 U.S.C. App. 456(j) 1, 3, 4, 5, 6, 8, 11, 12

Miscellaneous:
James, *The Varieties of Religious Experience* (1963 ed.) 10
Konvitz, "The Meaning of 'Religion' in the First Amendment: The *Torcaso* Case," *The Catholic World*, August 1963 ..... 2, 9
Religious Bodies (Dept. of Commerce, 1936), Vol. II, Pt. 1 6

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 50

UNITED STATES OF AMERICA, PETITIONER

v.

DANIEL ANDREW SEEGER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

Our study of the briefs heretofore filed suggests the need for clarification along three lines:

First, the words "religion" and "religious" are frequently used in different senses instead of with one constant meaning.

Second, much of the argument, especially in the briefs *amici curiae,* is directed to the constitutionality of Section 6(j) abstractly, without focusing upon the issue before the Court.

Third, while we have shown that, in classifying persons for combatant or non-combatant national service, Section 6(j) draws a rational line, introduces no invidious distinctions, and fairly implements the purpose of accommodating the demands of na-

tional defense with the claims of freedom of religion, we failed to articulate with sufficient clarity the predicate upon which the argument rests—that the First Amendment leaves some scope for the exercise of legislative judgment in defining the classifications.

This reply brief is directed to these three points.

I

Although its central meaning is plain, the outer limits of the word "religious" are so inexact as to permit its use in quite different senses. There are writers who would include Communism in a definition of "religion."[1] The conventional dictionary definitions, as we pointed out in our opening brief,[2] are altogether different from the usage of the modern psychologist. Citations are hardly necessary to demonstrate that two or three generations ago no devout church-goer would have accepted so broad a definition as that offered by respondent and many of the *amicus* briefs.

Respondent taxes the government for asserting that Seeger's views are not "religious" when in fact they are.[3] We believe that the context in each instance makes our meaning plain, but it is irrelevant whether our usage or respondent's is linguistically correct. The essential thing is to be as clear as possible about three points as to which there can be no rational dispute:

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[1] Konvitz, "The Meaning of 'Religion' in the First Amendment: The *Torcaso* Case," *The Catholic World*, August 1963, pp. 288, 295.

[2] Brief for the United States, p. 76.

[3] Brief for Respondent, pp. 4–7.

(1) Seeger's views are "religious" as *some* careful thinkers and writers use the term. At the trial it was stipulated that some theologians whom he might call as witnesses would testify that his opposition to war is "religious" within the meaning suggested by Judge Augustus N. Hand in *United States* v. *Kauten*, 133 F. 2d 703 (C.A. 2) (R. 50). Whether they would be right depends upon the interpretation of the *Kauten* opinion as well as the characterization of Seeger's beliefs; it is also irrelevent.

(2) Whether Seeger's views are "religious" in the same sense in which religion is used in the First Amendment is in dispute. The answer obviously depends not merely upon a characterization of Seeger's views but also upon the meaning of "religion" in the amendment itself. There is also room for dispute about whether the guarantee against State interference with "religion" delimits a constant area for all the purposes of the First Amendment or has a different significance according to the subject matter of the challenged legislation. See pp. 8–11 below. The pinning of labels will not rationally decide the case.

(3) Seeger's views are not "religious" in the sense in which the word is used in Section 6(j). His statements make it very clear that his opposition to war arises from—

> essentially political, sociological, or philosophical views or a merely personal moral code

as contrasted with—

> belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.

II

Respondent's brief and the briefs of *amici curiae* argue the case as if the issue were whether Congress may constitutionally grant an exemption from combatant military training and service limited to persons whose *theistic* religious beliefs include conscientious opposition to participation in war in any form, thus distinguishing between persons whose religion is theistic and others whose religion is non-theistic.[4] Our statement of the question presented has somewhat the same shortcoming for it presents for decision the question of the constitutionality of Section 6(j) "in rem."

The real question is much more specific. Seeger has no standing to secure a general ruling upon whether the limitations upon the scope of Section 6(j) make it unconstitutional in some applications. He cannot assert the constitutional rights of others. He must show that drafting him is a violation of his own constitutional rights. *E.g., United States* v. *Raines,* 362 U.S. 17, 20–22; *Virginian Ry. Co.* v. *Federation,* 300 U.S. 515, 558; *Blackmer* v. *United States,* 284 U.S. 421, 442; *United States* v. *Wurzbach,* 280 U.S. 396, 399; *Jeffrey Mfg. Co.* v. *Blagg,* 235 U.S. 571, 576; *Steamship Co.* v. *Emigration Commissioners,* 113 U.S. 33, 39.

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[4] Brief for Respondent, 39; Brief for the American Ethical Union as *Amicus Curiae*, pp. 14–22; Brief of the American Humanist Association as *Amicus Curiae*, pp. 4–8; Brief of the American Civil Liberties Union as *Amicus Curiae*, p. 8; Brief for the American Jewish Congress as *Amicus Curiae*, pp. 3, 5–12.

Since Seeger does not fall within the exemption granted by Section 6(j), he is forced to argue that it is unconstitutional to draft him for combatant service while granting an exemption from combatant service to those who fall within the exemption. The argument has to be that he is the victim of unconstitutional discrimination which can be avoided, so long as the government exempts those within Section 6(j), only by exempting him also. To prevail, therefore, Seeger must show that, as a result of Section 6(j), the government is unconstitutionally discriminating against persons of his views.

Manifestly, all the persons outside the ambit of Section 6(j) are not to be lumped together as a single class victimized by statutory discrimination. Successfully to challenge the validity of an order to report for induction upon the ground that Section 6(j) results in an unconstitutional classification, the registrant must show that he is in a class victimized by the discrimination. One whose objection to war is admittedly based upon a purely ethical code could not attack Section 6(j) upon the ground that it unconstitutionally distinguishes between Quakers and non-theistic Buddhists, for even if that were true,[5] the

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[5] Although Buddhism is sometimes described as a non-theistic religion, it seems very likely that at least some Buddhists have a sufficient belief in a Supreme Being to satisfy the definition of religious training and belief in Section 6(j). According to a statement furnished the Bureau of the Census by Reverend S. Alex White, of the Buddhist Mission of North America, Buddhism teaches two main pathways to salvation, one of which is "to walk along the 'Path of the Pure Land,' believing in salvation through the grace of Amida (Infinite Life and Light)." Buddhism, he writes, " is neither atheistic nor agnostic. It does

discrimination against Buddhists would violate no right of the registrant's. Their religious training and belief is altogether different from his. Similarly, Seeger cannot set up the claims that might perhaps be made by Buddhists or members of the Ethical Culture Society. He must show unconstitutional discrimination against him.

The lack of a belief in obligations to a Supreme Being is only one of the characteristics of Seeger's belief. While his thinking includes much that might fairly be called philosophical as well as moral or ethical, its base is highly political at least in relation to war. Furthermore, Seeger's training and opinions contain little else that relates to "religion" as distinguished from a purely ethical code. Seeger belongs to no organized sect, follows no ritual, knows no catechism, acknowledges no scripture, worships not in a church or temple, and follows no priests. The only question here, therefore, is whether the Constitution prohibits a distinction in classification for the purposes of national service between those refusing to take part in combat because of religious opposition to war, as defined in Section 6(j), and those objecting because of personal "ethico-political" views.

The impact of the statute upon the Ethical Culture Society, Buddhists, or other groups discussed in the briefs attacking the statute, either specifically or by undifferentiated generalization, can be determined if and when those cases should arise.

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not deny or ignore a supreme reality, nor does it assert that if such supreme reality is, that man is incapable of recognizing it." *Religious Bodies* (Dept. of Commerce, 1936), Vol. II, Part 1, pp. 344–345.

III

In our opening brief we argued, first, that the First Amendment permits Congress, in providing for military training and service, to achieve an accommodation between the claims of religion and the need for equality, and therefore universality, of military obligation by exempting from combatant service those whose religion leads them to opposition to war in any form. Since there appears to be little dissent from this proposition in any of the briefs challenging the constitutionality of the statute, we rely on our original argument to establish the point.

The principal attacks upon the statute take the same line as the opinion below: the First and Fifth Amendments prohibit any differentiation between forms of religious belief; Seeger's beliefs are essentially religious within the meaning of the First Amendment, yet the Act denies him the exemption allowed to others; therefore, the argument concludes, the exemption is unconstitutional.

There are two answers to this line of argument. One is that Seeger's views, although "religious" as some psychologists and theologians use the term, nevertheless are not "religious" within the meaning of the First Amendment. We made this point in our opening brief (pp. 72–78). Fundamentally, however, our answer is more eclectic. We see no need to determine whether Seeger's views are or are not religious for all the purposes of the First Amendment. The Amendment, we submit, leaves some play in the joints when applied to legislation dealing with secular con-

753-182—64——2

duct and allows Congress to draw reasonable lines of distinction; and we then go on to say that the lines drawn by Section 6(j) are a proper method of accommodating the need for national service to the claims of religion. Thus, the critical difference between our reasoning and the rationale of the court below (and of the opposing briefs) is that we think its major premise—that the First Amendment permits no differentiation between forms of religious belief even in relation to conduct—is itself too broad and undifferentiated because it fails to distinguish between the different kinds of legislation that may be challenged under the First Amendment and assumes that its prohibitions are coextensive regardless of the context.

The problem of delimiting the extent and character of the restrictions put upon government by the Establishment and Free Exercise Clauses arises in different contexts. When the governmental action challenged under the First Amendment attempts to punish or regulate beliefs, ritual, or the profession of beliefs, then the widest possible scope is given to the protection of "religion." Here, the central aim is to protect views about the subjects dealt with in religion; to protect proselytizing; to guarantee each

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* See *Cantwell* v. *Connecticut*, 310 U.S. 296; *Cox* v. *New Hampshire*, 312 U.S. 569; *Jamison* v. *Texas*, 318 U.S. 413; *Largent* v. *Texas*, 318 U.S. 418; *Murdock* v. *Pennsylvania*, 319 U.S. 105; *Martin* v. *City of Struthers*, 319 U.S. 141; *Prince* v. *Massachusetts*, 321 U.S. 158; *Follett* v. *Town of McCormick*, 321 U.S. 573; *Marsh* v. *Alabama*, 326 U.S. 501; *Tucker* v. *Texas*, 326 U.S. 517; *Kunz* v. *New York*, 340 U.S. 290; *Niemotko* v. *Maryland*, 340 U.S. 268.

man his own cosmology and philosophy of life; to protect professions or refusals to profess belief with respect to those subjects;[7] and to safeguard the right to engage or not engage in ritual having little or no immediate secular significance.[8] Indeed, it has been suggested that since the First Amendment protects other forms of opinion or belief there may be no need to distinguish between religious and social, political, or philosophical opinions. Konvitz, "The Meaning of 'Religion' in the First Amendment: The *Torcaso* Case," *The Catholic World;* August 1963, pp. 288, 295.

Plainly test oaths or other laws requiring or prohibiting expressions or professions of belief, like official sanctions for belief or non-belief or any variety of belief or skepticism with respect to any subject that could be brought under the head of "religion," are barred by the First Amendment. That was the holding of *Torcaso* v. *Watkins,* 367 U.S. 488. Expressions concerning the nature of religion in that context should not be uncritically transported into different contexts.

Very different problems are raised when the contention is that the State is violating the First Amendment by support of religion as in *Engel* v. *Vitale,* 370 U.S. 421, and *Abington School District* v.

[7] See *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624.

[8] See *Fowler* v. *Rhode Island,* 345 U.S. 67; *Poulos* v. *New Hampshire,* 345 U.S. 395.

Schempp, 374 U.S. 203.[9] Surely those decisions do not lead inescapably to the conclusion that a State may not contribute funds or property to teaching any of the subjects sometimes dealt with under the heading of "religion." William James suggested that religion might be taken to be (*The Varieties of Religious Experience* (1963 ed.), p. 31):

> *the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine.*

Much of the world's great poetry would be barred from the classroom if *Engel* and *Schempp* apply to any subject matter within James' definition. Nor will it do to say that the poems would be read and studied only as literature. Many of the best teachers would use them to instill the feelings that stir and comfort men in their solitude.

Seeger argues that conscience is religion. Some of the *amicus* briefs argue that a moral or ethical code is religion. Does this mean that ethics may not be taught in grammar or high school with the view of inculcating in the next generation the established moral code of the community? Some observers have declared that in the United States democracy is a religion. Does it follow that the civics courses which do not treat democracy, socialism, communism, and fascism all with dispassionate neutrality violate the First Amendment?

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[9] See also *Everson* v. *Board of Education*, 330 U.S. 1; *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203; *Zorach* v. *Clauson*, 343 U.S. 306; *McGowan* v. *Maryland*, 366 U.S. 420.

Obviously such questions are not presented by the instant case. We raise them only to emphasize the error of uncritically assuming that the scope of the field occupied by the terms "religion" and "free exercise thereof" in the First Amendment is unrelated to the subject matter of the governmental action under review.

The instant case falls in a third area: legislation dealing with secular conduct resulting from beliefs. Such legislation may conflict with religious liberty either because it requires conduct inconsistent with the teachings of religion (*e.g., Reynolds* v. *United States,* 98 U.S. 145; *Selective Draft Law Cases,* 245 U.S 366; *Hamilton* v. *Regents,* 293 U.S. 245, 265, (Mr. Justice Cardozo concurring) or because the governmental regulation, in conjunction with the observance of the teaching of a religion, results in peculiar economic injury (*e.g., Sherbert* v. *Verner,* 374 U.S. 398; *Braunfeld* v. *Brown,* 366 U.S. 599). In this area, where the government is requiring or prohibiting secular conduct, its latitude, while not unrestrained, is much greater than in the situations discussed above.

The Universal Military Training and Service Act falls in this category. It does not punish Seeger because of his beliefs or lack of belief, nor does it attempt to influence his belief. It leaves him free to believe or not to believe, and to profess or not to profess, whatever faith he will. The Act requires of him military service, which is secular conduct, and it is for the refusal of such service, required of most young men, that this prosecution was brought. While the Act requires different secular conduct—different

service—from those of different views, taking the views as established facts, nevertheless it plainly has neither the purpose nor tendency to interfere with beliefs, whether religious or non-religious. And obviously the Act is not concerned with ritual, proselytizing, or professions of belief.

Nor does the Universal Military Training and Service Act fall in the field of support for religion. The exemption of religious objectors from combatant training and service and their assignment to other forms of national service, taking beliefs as facts for the purposes of classifying them, has no tendency to assist or propagate religious beliefs, and therefore does not constitute aid to religion in violation of the First Amendment. See Brief for the United States, pp. 19–33. The point remains true even if "religion," for the purposes of the First Amendment, be defined so broadly as to cover a larger area than the "religious training and belief" described by Section 6(j). For the exemption, viewed realistically, in no sense supports or influences one set of beliefs against another, whether all be within or some be without the First Amendment. Consequently, the expressions quoted by counsel from cases dealing with support of religion have no application here.

We recognize that the statute classifies men according to belief even though it takes their beliefs as facts and makes no effort to reward or punish. That much is inescapable. The necessity of drawing some line between beliefs could be avoided only if Congress were to eliminate the traditional policy of making special provision for religious objectors or were to grant an

exemption to anyone who held the opinion that he ought to refrain from military service. If any line is to be drawn at any intermediate point, it must be in terms of the beliefs or opinions upon which the registrant wishes to act.

It does not help very much to approach the problem by asking how much of the continuum is "religion" in the constitutional sense, and then saying that Congress may not draw the line somewhere within that part of the continuum which is within the scope of religion. To provide a definition of religion with exact limits, so that it covers neither more ground nor less, itself involves drawing arbitrary lines determining questions of degree and the relative importance of the different elements of religion. The definition, moreover, will depend upon the subjective concern of the definer, and even upon his religion. In the traditional view religion involves belief in a God or gods. Many churchmen would reject a definition including humanism and moral philosophy. Some psychologists and sociologists would reach a different conclusion, defining the term to reach anything that serves, for a particular individual, the inner functions traditionally served by religion. Some modern theologians, heavily influenced by psychology, have moved towards the latter view. For the Court to give any one definition of religion constitutional sanction (compare Brief for the American Jewish Congress as *Amicus Curiae*, p. 15) would seem itself to be inconsistent with the philosophy of the First Amendment.

To allow no exemption would be calloused interference with religious liberty. To allow an exemption to anyone who thought he ought to stay out of war would destroy confidence in the Selective Service System. We cannot believe that the First Amendment leaves no other course.

Of course, the classification of men resulting from differences in belief must be strictly scrutinized. Any differentiation in the classes of belief must satisfy the standards of due process established by the Fifth Amendment (*Bolling* v. *Sharpe*, 347 U.S. 497), and in applying that concept to differentiations stemming from belief the First Amendment puts a heavy burden upon the State. There is no room for differentiation that is unnecessary, invidious, or based upon judgments concerning the truth or worth of different views. All we say is that where, as here, there is neither interference with belief nor support for all religion or some religions, and where a line drawn in terms of belief is inescapable if any freedom of religion is to be secured, then there is some room for justification of a legislative classification. Stated affirmatively, if the differentiation made by Congress is the result solely of secular considerations or of the necessity for drawing a line somewhere in the continuum of thought and emotion through which political or social opinion shades into religious belief (by any definition), and if the line is justified as reasonable in those terms, then there is no violation of the First or Fifth Amendment.

The justification for the statutory differentiation between persons qualifying under Section 6(j) and

persons holding beliefs like Seeger's is the burden of our opening brief (pp. 34–83). There is no reason to repeat it here.

CONCLUSION

For the foregoing reasons and those stated in our opening brief, we respectfully submit that the judgment below should be reversed.

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